# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1922

No. [redacted]88

FRED BROWNE, PLAINTIFF IN ERROR AND PETITIONER,

*vs.*

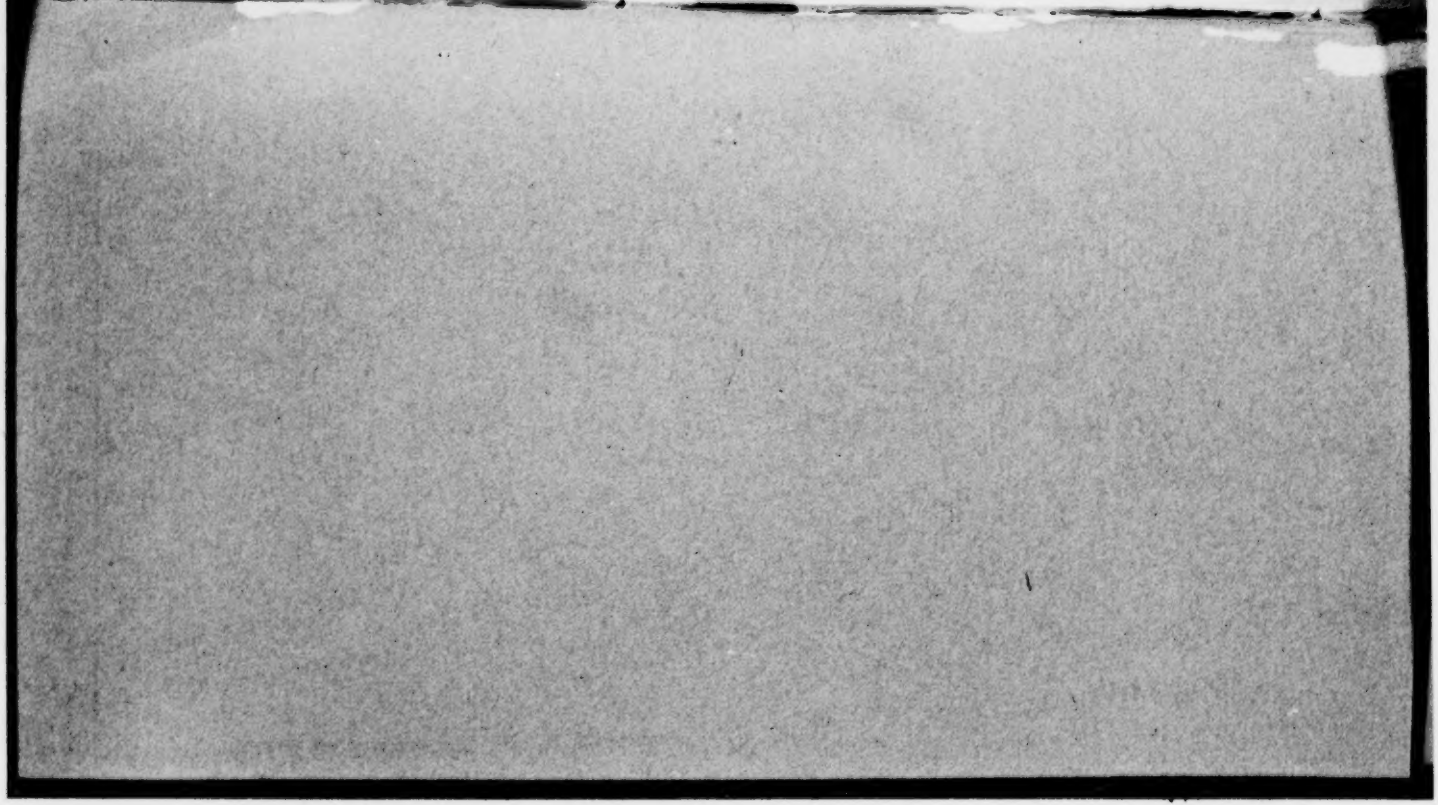
CHARLES B. THORN, WILLIAM T. MAGINNIS, SAMUEL C. COLEMAN, AND MILES J. KEHOE, PARTNERS, DOING BUSINESS AS THORN & MAGINNIS.

IN ERROR AND ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

RECORD ON WRIT OF ERROR FILED MAY 31, 1921.

CERTIORARI AND RETURN FILED JUNE 23, 1921.

(28,290)



# (28,290)

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1921.

# No. 335.

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IN ERROR TO AND ON WRIT OF CERTIORARI FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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INDEX.


| | Orig. | Print |
|---|---|---|
| Caption, U. S. Circuit Court of Appeals | *a* | *a* |
| Citation and Acknowledgment of Service | 1 | 1 |
| Writ of Error and Clerk's return | 2 | 2 |
| Caption to Transcript from U. S. District Court | 3 | 2 |
| Complaint | 4 | 3 |
| Exhibit A, Verified Statement of Thorn and Maginnis in account with Fred Browne | 7 | 5 |
| Summons and Marshal's return | 9 | 7 |
| Record Entry of the filing of Motion to make Complaint more definite and certain | 10 | 8 |
| Motion to make Complaint more definite and certain | 11 | 8 |

| | Original | Print. |
|---|---|---|
| Record Entry of the filing of response to Motion to make Complaint more definite and certain | 13 | 9 |
| Response to Motion to make Complaint more definite and certain | 14 | 9 |
| Telegram, Fred Browne to Thorn and Maginnis, January 25, 1917 | 15 | 10 |
| Telegram, Fred Browne to Thorn and Maginnis, January 25, 1917 | 15 | 10 |
| Telegram, Thorn and Maginnis to Fred Browne, January 25, 1917 | 15 | 10 |
| Telegram, Fred Browne to Thorn and Maginnis, January 25, 1917 | 15 | 10 |
| Telegram, Fred Browne to Thorn and Maginnis, January 27, 1917 | 16 | 11 |
| Telegram, Thorn and Maginnis to Fred Browne | 16 | 11 |
| Telegram, Fred Browne to Thorn and Maginnis, January 29, 1917 | 16 | 11 |
| Telegram, Thorn and Maginnis to Fred Browne, January 29, 1917 | 16 | 11 |
| Telegram, Fred Browne to Thorn and Maginnis, January 29, 1917 | 17 | 12 |
| Telegram, Thorn and Maginnis to Fred Browne, January 29, 1917 | 17 | 12 |
| Telegram, Fred Browne to Thorn and Maginnis, January 30, 1917 | 17 | 12 |
| Telegram, Thorn and Maginnis to Fred Browne, January 30, 1917 | 17 | 12 |
| Telegram, Fred Browne to Thorn and Maginnis, January 31, 1917 | 18 | 12 |
| Telegram, Thorn and Maginnis to Fred Browne, January 31, 1917 | 18 | 13 |
| Telegram, Fred Browne to Thorn and Maginnis, February 1, 1917 | 18 | 13 |
| Telegram, Thorn and Maginnis to Fred Browne, February 1, 1917 | 18 | 13 |
| Motion to make Complaint more definite and certain sustained in part and overruled in part | 19 | 13 |
| Record Entry of the filing of Response to paragraphs two and five of Motion to make Complaint more definite and certain | 20 | 13 |
| Response to paragraphs two and five of Motion to make Complaint more definite and certain | 21 | 14 |
| Record Entry of the filing of Motion to strike out Amendment to the Complaint | 22 | 14 |
| Motion to strike out Amendment to the Complaint | 23 | 14 |
| Order overruling Motion to strike out Amendment to the Complaint | 24 | 15 |
| Demurrer to the Complaint | 25 | 15 |
| Order of submission of Demurrer to Complaint | 26 | 16 |
| Order overruling Demurrer to Complaint, etc | 27 | 16 |
| Order overruling Demurrer vacated and Demurrer reargued and submitted | 28 | 16 |
| Order overruling Demurrer | 29 | 16 |
| Record Entry of the filing of Answer and Counter-Claim | 30 | 17 |
| Answer and Counter-claim | 31 | 17 |
| Memorandum of the Clerk of the District Court | 37 | 21 |
| Jury Impaneled, Trial, January 26, 1920 | 38 | 21 |
| Trial, January 27, 1920 | 39 | 22 |
| Trial, January 28, 1920 | 40 | 22 |
| Trial, January 29, 1920 | 41 | 22 |
| Trial, Verdict and Judgment, January 30, 1920 | 42 | 23 |
| Judgment, January 30, 1920 | 42 | 23 |
| Order allowing time to file Motion for New Trial | 43 | 23 |
| Record Entry of the filing of Motion for New Trial | 44 | 24 |
| Memorandum of the Clerk of the District Court | 44 | 24 |
| Order overruling Motion for New Trial and allowing time to file Bill of Exceptions | 45 | 24 |
| Petition for Writ of Error | 46 | 24 |
| Assignment of Errors | 48 | 26 |
| Supersedeas Bond on Writ of Error | 74 | 50 |
| Bill of Exceptions | 76 | 52 |
| Caption | 76 | 52 |

| | Original | Print. |
|---|---|---|
| Testimony for Plaintiff (Depositions of) | 77 | 52 |
| Miles J. Kehoe | 77 | 52 |
| Exhibits | 80 | 54 |
| 1, Telegram, Fred Browne to Thorn and Maginnis, January 25, 1917 | 80 | 54 |
| 2, Telegram, Fred Browne to Thorn and Maginnis, January 25, 1917 | 80 | 55 |
| 3, Telegram, Fred Browne to Thorn and Maginnis, January 25, 1917 | 82 | 56 |
| 4, Telegram, Thorn and Maginnis to Fred Browne, January 25, 1917 | 83 | 58 |
| 5, Telegram, Fred Browne to Thorn and Maginnis, January 27, 1917 | 83 | 58 |
| 6, Telegram, Thorn and Maginnis to Fred Browne, January 27, 1917 | 84 | 59 |
| 7, Telegram, Fred Browne to Thorn and Maginnis, January 29, 1917 | 84 | 60 |
| 8, Telegram, Thorn and Maginnis to Fred Browne, January 29, 1917 | 85 | 60 |
| 9, Telegram, Fred Browne to Thorn and Maginnis, January 29, 1917 | 85 | 61 |
| 10, Telegram, Thorn and Maginnis to Fred Browne, January 29, 1917 | 86 | 61 |
| 11, Telegram, Fred Browne to Thorn and Maginnis, January 30, 1917 | 86 | 62 |
| 12, Telegram, Thorn and Maginnis to Fred Browne, January 30, 1917 | 87 | 63 |
| 13, Telegram, Fred Browne to Thorn and Maginnis, January 31, 1917 | 87 | 63 |
| 14, Telegram, Thorn and Maginnis to Fred Browne, January 31, 1917 | 87 | 64 |
| 15, Telegram, Fred Browne to Thorn and Maginnis, February 1, 1917 | 88 | 65 |
| 16, Telegram, Thorn and Maginnis to Fred Browne, February 1, 1917 | 89 | 65 |
| 16A, Broker's Contract Slip from C. P. Ellis and Company, January 25, 1917 | 100 | 76 |
| 17, Broker's Contract Slip from Hayward Howard and Company, January 25, 1917 | 101 | 77 |
| 18, Broker's Contract Slip from Silvan Newburger and Company, January 25, 1917 | 102 | 78 |
| 19, Broker's Contract Slip from Harrison and Lawrence, January 27, 1917 | 103 | 79 |
| 20, Broker's Contract Slip from Pinckard and Kennedy, January 27, 1917 | 103 | 80 |
| 21, Broker's Contract Slip from H. D. Cothran and Company, January 29, 1917 | 104 | 81 |
| 22, Broker's Contract Slip from H. and B. Beer, January 29, 1917 | 105 | 81 |
| 23, Broker's Contract Slip from Pinckard and Kennedy, January 29, 1917 | 105 | 82 |
| 24, Broker's Contract Slip from John F. Clark and Company, January 30, 1917 | 106 | 83 |
| 25, Broker's Contract Slip from Felix Couturie and Company, January 31, 1917 | 106 | 84 |

| | Original | Print. |
|---|---|---|
| 26, Broker's Contract Slip from Shepard and Gluck, January 31, 1917 | 107 | 84 |
| 27, Broker's Contract Slip of Airy and Stouse, February 1, 1917 | 108 | 86 |
| 28, Statement of Account Sales rendered to Fred Browne by Thorn and Maginnis, February 1, 1917 | 110 | 87 |
| 29, Telegram, Thorn and Maginnis to Fred Browne, February 1, 1917 | 111 | 90 |
| 30, Telegram, Thorn and Maginnis to Fred Browne, February 1, 1917 | 112 | 90 |
| 31, Telegram, Fred Browne to Thorn and Maginnis, February 1, 1917 | 113 | 91 |
| 32, Telegram, Thorn and Maginnis to Fred Browne, February 2, 1917 | 113 | 92 |
| 33, Telegram, Thorn and Maginnis to Fred Browne, February 2, 1917 | 113 | 92 |
| 34, Telegram, Thorn and Maginnis to Fred Browne, February 2, 1917 | 114 | 93 |
| 35, Telegram, Fred Browne to Thorn and Maginnis, February 2, 1917 | 115 | 94 |
| 36, Telegram, Thorn and Maginnis to Fred Browne, February 5, 1917 | 115 | 94 |
| 37, Telegram, Thorn and Maginnis to Miles Kehoe, February 8, 1917 | 118 | 97 |
| D. C. Villars | 123 | 103 |
| Exhibit 38, Statement of Thorn and Maginnis in account with Fred Browne, May 29, 1917 | 124 | 105 |
| Samuel Carey Coleman | 128 | 110 |
| Henry G. Hester | 136 | 119 |
| Plaintiff's Exhibit A, Charter, Constitution, By-Laws and Rules of the New Orleans Cotton Exchange, 1915 | 140 | 123 |
| Charter | 140-a | 163 |
| Constitution | 140-b | 173 |
| By-Laws | 140-c | 181 |
| Spot Rules | 140-d | 195 |
| Free on Board Rules | 140-e | 207 |
| Future Rules | 140-f | 223 |
| Cotton seed and cotton seed products | 140-g | 295 |
| General Rules | 140-h | 309 |
| Rules of Order | 140-i | 321 |
| Press Supervision | 140-j | 327 |
| Levee Inspection | 140-k | 337 |
| Rules relating to standard of Compressing, etc | 140-l | 345 |
| Extract from the Agricultural Appropriation Act of Congress approved August 11, 1916, (Cotton Futures Act Part A) | 140-m | 353 |
| United States Cotton Futures Act approved August 18, 1914 | 140-n | 361 |
| W. R. Leverich | 143 | 382 |
| Samuel Carey Coleman, recalled | 147 | 387 |
| D. C. Villars, recalled | 148 | 388 |
| Exhibits | 149 | 389 |
| 39, Form of Customer's Confirmation Slip used by Thorn and Maginnis | 149 | 389 |
| 40, Confirmation Slip Thorn and Maginnis to Fred Browne, January 31, 1917 | 150 | 390 |

| | Original | Prin. |
|---|---|---|
| 41, Confirmation Slip Thorn and Maginnis to Fred Browne, January 30, 1917 | 150 | 391 |
| 42, Confirmation Slip Thorn and Maginnis to Fred Browne, January 29, 1917 | 151 | 391 |
| 43, Confirmation Slip Thorn and Maginnis to Fred Browne, January 27, 1917 | 151 | 392 |
| 44, Confirmation Slip Thorn and Maginnis to Fred Browne, January 25, 1917 | 152 | 393 |
| 45, Confirmation Slip, Thorn and Maginnis to Fred Browne, February 1, 1917 | 152 | 393 |
| George Dillenkoffer | 153 | 394 |
| W. R. Leverich, recalled | 153 | 395 |
| Articles 1, 2, and 3 of the New Orleans Cotton Exchange | 154 | 395 |
| Testimony for Plaintiffs | 154 | 396 |
| L. P. Barkdull | 154 | 396 |
| Charles B. Thorn | 158 | 399 |
| Exhibits | 169 | 407 |
| A, Contract for cotton bought from C. P. Ellis and Company by Thorn and Maginnis, January 25, 1917 | 169 | 407 |
| B, Contract for cotton bought from Hayward, Howard and Company by Thorn and Maginnis, January 25, 1917 | 170 | 408 |
| C, Contract for cotton bought from Silvan Newburger and Company by Thorn and Maginnis, January 25, 1917 | 170 | 409 |
| D, Contract for cotton bought from Pinckard and Kennedy by Thorn and Maginnis, January 27, 1917 | 171 | 410 |
| E, Contract for cotton bought from Harrison and Lawrence by Thorn and Maginnis, January 27, 1917 | 172 | 410 |
| F, Contract for cotton bought from H. D. Cothran and Company by Thorn and Maginnis, January 29, 1917 | 173 | 411 |
| G, Contract for cotton bought from Pinckard and Kennedy by Thorn and Maginnis, January 29, 1917 | 173 | 412 |
| H, Contract for cotton bought from H. and B. Beer by Thorn and Maginnis, January 29, 1917 | 174 | 413 |
| I, Contract for cotton bought from John F. Clark and Company by Thorn and Maginnis, January 30, 1917 | 174 | 414 |
| J, Contract for cotton bought from Shepard and Gluck by Thorn and Maginnis, January 31, 1917 | 175 | 414 |
| K, Contract for cotton bought from Felix Couturie and Company by Thorn and Maginnis, January 31, 1917 | 175 | 415 |
| L, Contract for cotton sold to Messrs. Airey and Stouse, February 1, 1917 | 176 | 416 |
| Defendant's Exhibits | 180 | 419 |
| 1, Letter, Thorn and Maginnis to Fred Browne, September 22, 1916 | 180 | 419 |
| 2, Statement of Thorn and Maginnis in account with Fred Browne, December 19, 1916 | 211 | 439 |
| 3, Statement of Thorn and Maginnis in account with Fred Browne, January 10, 1917 | 211 | 440 |
| 4, Letter, Thorn and Maginnis to Fred Browne, October 5, 1916 | 212 | 441 |
| 5, Letter, Thorn and Maginnis to Fred Browne, October 9, 1916 | 213 | 442 |
| 6, Letter, Thorn and Maginnis to Fred Browne, October 11, 1916 | 215 | 444 |

| | Original | Print. |
|---|---|---|
| 7, Letter, Thorn and Maginnis to Fred Browne, October 19, 1916 | 219 | 446 |
| 8, Letter, Thorn and Maginnis to Fred Browne, October 13, 1916 | 219 | 447 |
| 9, Letter, Thorn and Maginnis to Fred Browne, October 18, 1916 | 219 | 447 |
| 10, Letter, Thorn and Maginnis to Fred Browne, October 23, 1916 | 222 | 449 |
| 11, Letter, Thorn and Maginnis to Fred Browne, October 25, 1916 | 226 | 452 |
| 12, Letter, Thorn and Maginnis to Fred Browne, October 25, 1916 | 227 | 453 |
| 12, Letter, Thorn and Maginnis to Fred Browne, October 31, 1916 | 227 | 454 |
| 13, Letter, Thorn and Maginnis to Fred Browne, October 31, 1916 | 227 | 454 |
| 14, Letter, Thorn and Maginnis to Fred Browne, October 31, 1916 | 228 | 455 |
| 15, Market Letter, from Thorn and Maginnis, October 23, 1916 | 229 | 456 |
| 16, Market Letter, from Thorn and Maginnis, October 25, 1916 | 230 | 457 |
| 17, Market Letter, from Thorn and Maginnis, October 31, 1916 | 230 | 457 |
| 18, Letter, Thorn and Maginnis to Fred Browne, October 20, 1916 | 233 | 459 |
| 19, Letter, Thorn and Maginnis to Fred Browne, October 20, 1916 | 233 | 459 |
| 20, Letter, Thorn and Maginnis to Fred Browne, October 24, 1916 | 233 | 460 |
| 21, Market Letter, from Thorn and Maginnis, October 24, 1916 | 235 | 461 |
| 22, Letter, Thorn and Maginnis to Fred Browne, October 30, 1916 | 236 | 462 |
| 23, Letter, Thorn and Maginnis to Fred Browne, November, 4, 1916 | 236 | 463 |
| 24, Letter, Thorn and Maginnis to Fred Browne, November 4, 1916 | 237 | 464 |
| 25, Letter, Thorn and Maginnis to Fred Browne, November 6, 1916 | 238 | 464 |
| 26, Letter, Thorn and Maginnis to Fred Browne, November 8, 1916 | 238 | 465 |
| 27, Letter, Thorn and Maginnis to Fred Browne, November 8, 1916 | 239 | 466 |
| 28, Letter, Thorn and Maginnis to Fred Browne, November 11, 1916 | 239 | 466 |
| 29, Letter, Thorn and Maginnis to Fred Browne, November 8, 1916 | 240 | 467 |
| 30, Letter, Thorn and Maginnis to Fred Browne, November 13, 1916 | 241 | 468 |
| 31, Letter, Thorn and Maginnis to Fred Browne, November 15, 1916 | 241 | 469 |
| 32, Letter, Thorn and Maginnis to Fred Browne, November 15, 1916 | 241 | 469 |

| | Original | Print. |
|---|---|---|
| 33, Letter, Thorn and Maginnis to Fred Browne, November 11, 1916 | 242 | 470 |
| 34, Letter, Thorn and Maginnis to Fred Browne, November 16, 1916 | 242 | 470 |
| 35, Letter, Thorn and Maginnis to Fred Browne, November 16, 1916 | 242 | 471 |
| 36, Letter, Thorn and Maginnis to Fred Browne, November 17, 1916 | 243 | 471 |
| 37, Letter, Thorn and Maginnis to Fred Browne, November 18, 1916 | 243 | 472 |
| 38, Letter, Thorn and Maginnis to Fred Browne, November 18, 1916 | 243 | 472 |
| 39, Market Letter, from Thorn and Maginnis, November 17, 1916 | 244 | 473 |
| 40, Market Letter, from Thorn and Maginnis, November 21, 1916 | 245 | 474 |
| 41, Letter, Thorn and Maginnis to Fred Browne, November 20, 1916 | 245 | 474 |
| 42, Market Letter, from Thorn and Maginnis, November 20, 1916 | 246 | 475 |
| 43, Letter, Thorn and Maginnis to Fred Browne, November 21, 1916 | 246 | 476 |
| 44, Letter, Thorn and Maginnis to Fred Browne, November 22, 1916 | 247 | 476 |
| 45, Letter, Thorn and Maginnis to Fred Browne, November 22, 1916 | 247 | 477 |
| 46, Letter, Thorn and Maginnis to Fred Browne, November 24, 1916 | 248 | 478 |
| 47, Letter, Thorn and Maginnis to Fred Browne, November 25, 1916 | 248 | 478 |
| 48, Letter, Thorn and Maginnis to Fred Browne, November 27, 1916 | 249 | 479 |
| 49, Letter, Thorn and Maginnis to Fred Browne, November 27, 1916 | 249 | 479 |
| 50, Letter, Thorn and Maginnis to Fred Browne, November 28, 1916 | 250 | 480 |
| 51, Letter, Thorn and Maginnis to Fred Browne, December 1, 1916 | 250 | 480 |
| 52, Letter, Thorn and Maginnis to Fred Browne, December 4, 1916 | 251 | 481 |
| 53, Letter, Thorn and Maginnis to Fred Browne, December 1, 1916 | 251 | 481 |
| 54, Letter, Thorn and Maginnis to Fred Browne, December 2, 1916 | 252 | 482 |
| 55, Letter, Thorne and Maginnis to Fred Browne, December 2, 1916 | 252 | 483 |
| 56, Telegram, Thorn and Maginnis to Fred Browne, December 1, 1916 | 254 | 484 |
| 57, Telegram, Thorn and Maginnis to Fred Browne, December 1, 1916 | 254 | 484 |
| 58, Letter, Thorn and Maginnis to Fred Browne, December 4, 1916 | 254 | 484 |
| 59, Letter, Thorn and Maginnis to Fred Browne, December 5, 1916 | 254 | 485 |

| | Original | Print. |
|---|---|---|
| 60, Telegram, Thorn and Maginnis to Fred Browne, November 27, 1916 | 256 | 487 |
| 61, Telegram, Thorn and Maginnis to Fred Browne, November 27, 1916 | 257 | 487 |
| 62, Telegram, Thorn and Maginnis to Fred Browne, November 27, 1916 | 257 | 488 |
| 63, Telegram, Thorn and Maginnis to Fred Browne | 257 | 488 |
| 64, Telegram, Thorn and Maginnis to Fred Browne, November 27 | 258 | 488 |
| 65, Telegram, Thorn and Maginnis to Fred Browne, November 27, 1916 | 258 | 489 |
| 66, Telegram, Thorn and Maginnis to Fred Browne, November 27, 1916 | 258 | 489 |
| 67, Letter, Thorn and Maginnis to Fred Browne, December 6, 1916 | 259 | 489 |
| 68, Letter, Thorn and Maginnis to Fred Browne, December 5, 1916 | 259 | 490 |
| 69, Letter, Thorn and Maginnis to Fred Browne, December 7, 1916 | 260 | 491 |
| 70, Letter, Thorn and Maginnis to Fred Browne, December 8, 1916 | 260 | 492 |
| 71, Letter, Thorn and Maginnis to Fred Browne, December 8, 1916 | 261 | 493 |
| 72, Letter, Thorn and Maginnis to Fred Browne, December 9, 1916 | 261 | 493 |
| 73, Letter, Thorn and Maginnis to Fred Browne, December 11, 1916 | 262 | 494 |
| 74, Letter, Thorn and Maginnis to Fred Browne, December 11, 1916 | 263 | 495 |
| 75, Letter, Thorn and Maginnis to Fred Browne, December 11, 1916 | 263 | 495 |
| 76, Letter, Thorn and Maginnis to Fred Browne, December 13, 1916 | 264 | 496 |
| 77, Letter, Thorn and Maginnis to Fred Browne, December 13, 1916 | 264 | 497 |
| 78, Letter, Thorn and Maginnis to Fred Browne, December 14, 1916 | 265 | 498 |
| 79, Letter, Thorn and Maginnis to City National Bank, December 16, 1916 | 266 | 498 |
| 80, Letter, Thorn and Maginnis to City National Bank, December 18, 1916 | 266 | 499 |
| 81, Letter, Thorn and Maginnis to Fred Browne, December 18, 1916 | 268 | 500 |
| 82, Letter, Thorn and Maginnis to Fred Browne, December 19, 1916 | 268 | 501 |
| 83, Letter, Thorn and Maginnis to Fred Browne, December 20, 1916 | 269 | 502 |
| 84, Letter, Thorn and Maginnis to Fred Browne, December 16, 1916 | 269 | 502 |
| 85, Letter, Thorn and Maginnis to Fred Browne, December 22, 1916 | 270 | 503 |
| 86, Letter, Thorn and Maginnis to Fred Browne, December 19, 1916 | 270 | 503 |

| | Original | Print. |
|---|---|---|
| 87, Letter, Thorn and Maginnis to Fred Browne, December 19, 1916 | 271 | 504 |
| 88, Letter, Thorn and Maginnis to City National Bank, December 20, 1916 | 271 | 505 |
| 89, Letter, Thorn and Maginnis to Fred Browne, December 20, 1916 | 271 | 505 |
| 90, Letter, Thorn and Maginnis to Fred Browne, December 23, 1916 | 272 | 506 |
| 91, Letter, Thorn and Maginnis to Fred Browne, December 23, 1916 | 273 | 507 |
| 92, Letter, Thorn and Maginnis to Fred Browne, December 29, 1916 | 273 | 507 |
| 93, Letter, Thorn and Maginnis to Fred Browne, December 29 | 274 | 508 |
| 94, Letter, Thorn and Maginnis to Fred Browne, December 30, 1916 | 274 | 509 |
| 95, Letter, Thorn and Maginnis to Fred Browne, December 30, 1916 | 275 | 510 |
| 96, Letter, Thorn and Maginnis to Fred Browne, January 3, 1917 | 276 | 511 |
| 97, Letter, Thorn and Maginnis to Fred Browne, January 4, 1917 | 276 | 511 |
| 98, Letter, Thorn and Maginnis to Fred Browne, January 4, 1917 | 277 | 512 |
| 99, Letter, Thorn and Maginnis to Fred Browne, January 5, 1917 | 277 | 513 |
| 100, Letter, Thorn and Maginnis to City National Bank, January 6, 1917 | 278 | 514 |
| 101, Letter, Thorn and Maginnis to Fred Browne, January 7, 1917 | 278 | 514 |
| 102, Letter, Thorn and Maginnis to Fred Browne, January 8, 1917 | 279 | 515 |
| 103, Letter, Thorn and Maginnis to Fred Browne, January 9. | 279 | 515 |
| 104, Letter, Thorn and Maginnis to Fred Browne, January 10, 1917 | 280 | 517 |
| 105, Letter, Thorn and Maginnis to Fred Browne, January 11, 1917 | 281 | 518 |
| 106, Letter, Thorn and Maginnis to Fred Browne, January 12, 1917 | 282 | 519 |
| 107, Letter, Thorn and Maginnis to Fred Browne, January 13, 1917 | 283 | 520 |
| 108, Letter, Thorn and Maginnis to Fred Browne, January 12, 1917 | 283 | 521 |
| 109, Letter, Thorn and Maginnis to Fred Browne, January 18, 1917 | 284 | 522 |
| 110, Letter, Thorn and Maginnis to Fred Browne, January 23, 1917 | 284 | 522 |
| 111, Letter, Thorn and Maginnis to City National Bank, January 23, 1917 | 285 | 523 |
| 112, Letter, Thorn and Maginnis to Fred Browne, January 23, 1917 | 285 | 524 |
| 113, Letter, Thorn and Maginnis to Fred Browne, January 25, 1917 | 286 | 525 |
| 114, Market Letter, from Thorn and Maginnis, January 23, 1917 | 287 | 525 |

| | Original | Print. |
|---|---|---|
| 115. Letter, Thorn and Maginnis to Fred Browne, January 27, 1917 | 287 | 526 |
| 116, Letter, Thorn and Maginnis to Fred Browne, January 26, 1917 | 288 | 527 |
| 117, Letter, Thorn and Maginnis to Fred Browne, January 29, 1917 | 288 | 528 |
| 118, Letter, Thorn and Maginnis to Fred Browne, January 15, 1917 | 289 | 529 |
| 119, Letter, Thorn and Maginnis to Fred Browne, January 17, 1917 | 289 | 529 |
| 120, Letter, Thorn and Maginnis to Fred Browne, January 31, 1917 | 290 | 530 |
| 121, Letter, Thorn and Maginnis to Fred Browne, October 19, 1916 | 290 | 530 |
| 122, Letter, Thorn and Maginnis to Fred Browne, October 25, 1916 | 291 | 531 |
| 123, Letter, Thorn and Maginnis to Fred Browne, October 24, 1916 | 291 | 532 |
| 124, Letter, Thorn and Maginnis to Fred Browne, October 11, 1916 | 292 | 532 |
| 125, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, October 25, 1916 | 292 | 533 |
| 126, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, October 24, 1916 | 293 | 534 |
| 127, Letter, Thorn and Maginnis to Fred Brown, October 31, 1916 | 293 | 534 |
| 128, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, October 19, 1916 | 294 | 535 |
| 129, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, October 11, 1916 | 294 | 536 |
| 130, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, October 31, 1916 | 294 | 536 |
| 131, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, November 10, 1916 | 295 | 537 |
| 132, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, November 10, 1916 | 295 | 537 |
| 133, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, November 10, 1916 | 295 | 538 |
| 134, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, November 10, 1916 | 295 | 538 |
| 135, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, January 29, 1917 | 296 | 539 |
| 136, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, December 5, 1916 | 296 | 539 |
| 137, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, January 15, 1917 | 296 | 540 |
| 138, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, January 22, 1917 | 297 | 540 |
| 139, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, January 22, 1917 | 297 | 541 |
| 140, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, December 6, 1916 | 297 | 541 |
| 141, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, November 28, 1916 | 298 | 542 |

| | Original | Print. |
|---|---|---|
| 142, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, December 1, 1916 | 298 | 542 |
| 143, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, December 2, 1916 | 299 | 543 |
| 144, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, February 1, 1917 | 299 | 543 |
| 145, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, January 11, 1917 | 299 | 544 |
| 146, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, January 11, 1917 | 300 | 544 |
| 147, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, January 11, 1917 | 300 | 545 |
| 148, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, January 13, 1917 | 300 | 545 |
| 149, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, December 21, 1916 | 301 | 546 |
| 150, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, December 8, 1916 | 301 | 546 |
| 151, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, December 8, 1916 | 301 | 547 |
| 152, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, December 11, 1916 | 302 | 547 |
| 153, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, December 29, 1916 | 302 | 548 |
| 154, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, January 3, 1917 | 302 | 548 |
| 155, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, January 9, 1917 | 303 | 549 |
| 156, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, January 10, 1917 | 303 | 549 |
| 157, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, January 10, 1917 | 303 | 550 |
| 158, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, January 10, 1917 | 304 | 550 |
| 159, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, November 17, 1916 | 304 | 551 |
| 160, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, November 17, 1916 | 304 | 551 |
| 161, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, November 21, 1916 | 305 | 552 |
| 162, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, November 25, 1916 | 305 | 552 |
| 163, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, November 24, 1916 | 305 | 553 |
| 164, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, November 27, 1916 | 306 | 553 |
| 165, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, December 7, 1916 | 306 | 554 |
| 166, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, December 19, 1916 | 306 | 554 |
| 167, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, December 13, 1916 | 306 | 555 |
| 168, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, December 13, 1916 | 307 | 555 |

| | Original | Print |
|---|---|---|
| 169, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, December 13, 1916 | 307 | 556 |
| 170, Statement of purchase and sale, Thorn and Maginnis for account of Fred Browne, December 22, 1916 | 307 | 556 |
| Testimony for Defendant | 322 | 568 |
| J. L. Burba | 322 | 568 |
| Fred Browne | 324 | 569 |
| 171, Telegram, Thorn and Maginnis to Fred Browne, October 9, 1916 | 336 | 578 |
| 172, Telegram, Thorn and Maginnis to Fred Browne, October 9, 1916 | 336 | 578 |
| 173, Telegram, Thorn and Maginnis to Fred Browne, October 9, 1916 | 336 | 579 |
| 174, Telegram, Thorn and Maginnis to Fred Browne, October 13 | 336 | 579 |
| 175, Telegram, Thorn and Maginnis to Fred Browne, October 13 | 336 | 579 |
| 176, Telegram, Thorn and Maginnis to Fred Browne, October 19 | 336 | 579 |
| 177, Telegram, Thorn and Maginnis to Fred Browne | 336 | 580 |
| 178, Telegram, Thorn and Maginnis to Fred Browne | 336 | 580 |
| 179, Telegram, Thorn and Maginnis to Fred Browne | 336 | 580 |
| 180, Telegram, Thorn and Maginnis to Fred Browne, October 25, 1916 | 337 | 580 |
| 181, Telegram, Thorn and Maginnis to Fred Browne | 337 | 580 |
| 182, Telegram, Thorn and Maginnis to Fred Browne, October 30, 1916 | 337 | 581 |
| 183, Telegram, Thorn and Maginnis to Fred Browne, November 4, 1916 | 337 | 581 |
| 184, Telegram, Thorn and Maginnis to Fred Browne, November 10, 1916 | 337 | 581 |
| 185, Telegram, Thorn and Maginnis to Fred Browne, November 10, 1916 | 337 | 581 |
| 186, Telegram, Thorn and Maginnis to Fred Browne, November 10, 1916 | 337 | 581 |
| 187, Telegram, Thorn and Maginnis to Fred Browne, November 10, 1916 | 337 | 582 |
| 188, Telegram, Thorn and Maginnis to Fred Browne, November 10, 1916 | 337 | 582 |
| 189, Telegram, Thorn and Maginnis to Fred Browne, November 10, 1916 | 337 | 582 |
| 190, Telegram, Thorn and Maginnis to Fred Browne, November 16 | 338 | 582 |
| 191, Memorandum as to | 338 | 582 |
| 192, Telegram, Thorn and Maginnis to Fred Browne, November 10, 1916 | 338 | 582 |
| 193, Telegram, Thorn and Maginnis to Fred Browne, November 10, 1916 | 338 | 583 |
| 194, Telegram, Thorn and Maginnis to Fred Browne, November 15, 1916 | 338 | 583 |
| 195, Telegram, Thorn and Maginnis to Fred Browne, November 15, 1916 | 338 | 583 |
| 196, Telegram, Thorn and Maginnis to Fred Browne, November 15, 1916 | 338 | 583 |

| | Original | Print. |
|---|---|---|
| 197, Telegram, Thorn and Maginnis to Fred Browne | 338 | 583 |
| 198, Telegram, Thorn and Maginnis to Fred Browne, November 17, 1916 | 338 | 584 |
| 199, Telegram, Thorn and Maginnis to Fred Browne, November 17, 1916 | 339 | 584 |
| 200, Telegram, Thorn and Maginnis to Fred Browne | 339 | 584 |
| 201, Telegram, Thorn and Maginnis to Fred Browne, November 18, 1916 | 339 | 584 |
| 202, Telegram, Thorn and Maginnis to Fred Browne, November 21, 1916 | 339 | 584 |
| 203, Telegram, Thorn and Maginnis to Fred Browne, November 22, 1916 | 339 | 585 |
| 204, Telegram, Thorn and Maginnis to Fred Browne, November 22, 1916 | 339 | 585 |
| 205, Telegram, Thorn and Maginnis to Fred Browne | 339 | 585 |
| 206, Telegram, Thorn and Maginnis to Fred Browne, November 24, 1916 | 340 | 586 |
| 207, Telegram, Thorn and Maginnis to Fred Browne, November 24, 1916 | 340 | 586 |
| 208, Telegram, Thorn and Maginnis to Fred Browne, November 24, 1916 | 340 | 586 |
| 209, Telegram, Thorn and Maginnis to Fred Browne, November 25 | 340 | 586 |
| 210, Telegram, Thorn and Maginnis to Fred Browne, November 29, 1916 | 340 | 587 |
| 211, Telegram, Thorn and Maginnis to Fred Browne, December 1, 1916 | 340 | 587 |
| 212, Telegram, Thorn and Maginnis to Fred Browne, December 1, 1916 | 340 | 587 |
| 213, Telegram, Thorn and Maginnis to Fred Browne, December 1, 1916 | 340 | 587 |
| 214, Telegram, Thorn and Maginnis to Fred Browne, December 1, 1916 | 340 | 588 |
| 215, Telegram, Thorn and Maginnis to Fred Browne, December 2, 1916 | 341 | 588 |
| 216, Telegram, Thorn and Maginnis to Fred Browne, December 2, 1916 | 341 | 588 |
| 217, Telegram, Thorn and Maginnis to Fred Browne, December 2 | 341 | 588 |
| 218, Telegram, Thorn and Maginnis to Fred Browne, December 2, 1916 | 341 | 589 |
| 219, Telegram, Thorn and Maginnis to Fred Browne, December 4, 1916 | 341 | 589 |
| 220, Telegram, Thorn and Maginnis to Fred Browne, December 4, 1916 | 341 | 589 |
| 221, Telegram, Thorn and Maginnis to Fred Browne | 341 | 589 |
| 222, Telegram, Thorn and Maginnis to Fred Browne, December 5, 1916 | 341 | 590 |
| 223, Telegram, Thorn and Maginnis to Fred Browne, December 5, 1916 | 342 | 590 |
| 224, Telegram, Thorn and Maginnis to Fred Browne, December 5, 1916 | 342 | 590 |
| 225, Telegram, Thorn and Maginnis to Fred Browne, December 5, 1916 | 342 | 590 |

| | Original | Print. |
|---|---|---|
| 226, Telegram, Thorn and Maginnis to Fred Browne, December 5, 1916 | 342 | 591 |
| 227, Telegram, Thorn and Maginnis to Fred Browne, December 5, 1916 | 342 | 591 |
| 228, Telegram, Thorn and Maginnis to Fred Browne, December 5, 1916 | 342 | 591 |
| 229, Telegram, Thorn and Maginnis to Fred Browne, December 6, 1916 | 342 | 591 |
| 230, Telegram, Thorn and Maginnis to Fred Browne, December 5, 1916 | 343 | 592 |
| 231, Telegram, Thorn and Maginnis to Fred Browne, December 6, 1916 | 343 | 592 |
| 232, Telegram, Thorn and Maginnis to Fred Browne, December 6, 1916 | 343 | 592 |
| 233, Telegram, Thorn and Maginnis to Fred Browne, December 6 | 343 | 592 |
| 234, Telegram, Thorn and Maginnis to Fred Browne, December 7 | 343 | 593 |
| 235, Telegram, Thorn and Maginnis to Fred Browne, December 7, 1916 | 343 | 593 |
| 236, Telegram, Thorn and Maginnis to Fred Browne | 343 | 593 |
| 237, Telegram, Thorn and Maginnis to Fred Browne, December 8, 1916 | 343 | 593 |
| 238, Telegram, Thorn and Maginnis to Fred Browne, December 8, 1916 | 344 | 594 |
| 239, Telegram, Thorn and Maginnis to Fred Browne, December 8, 1916 | 344 | 594 |
| 240, Telegram, Thorn and Maginnis to Fred Browne, December 8, 1916 | 344 | 594 |
| 241, Telegram, Thorn and Maginnis to Fred Browne, December 8, 1916 | 344 | 594 |
| 242, Telegram, Thorn and Maginnis to Fred Browne, December 8, 1916 | 344 | 595 |
| 243, Telegram, Thorn and Maginnis to Fred Browne, December 8, 1916 | 344 | 595 |
| 244, Telegram, Thorn and Maginnis to Fred Browne, December 9, 1916 | 344 | 595 |
| 245, Telegram, Thorn and Maginnis to Fred Browne, December 9 | 345 | 595 |
| 246, Telegram, Thorn and Maginnis to Fred Browne, December 11, 1916 | 345 | 596 |
| 247, Telegram, Thorn and Maginnis to Fred Browne, December 11, 1916 | 345 | 596 |
| 248, Telegram, Thorn and Maginnis to Fred Browne, December 11, 1916 | 345 | 596 |
| 249, Telegram, Thorn and Maginnis to Fred Browne, December 11, 1916 | 345 | 596 |
| 250, Telegram, Thorn and Maginnis to Fred Browne, December 11, 1916 | 345 | 596 |
| 251, Telegram, Thorn and Maginnis to Fred Browne, December 11, 1916 | 345 | 597 |
| 252, Telegram, Thorn and Maginnis to Fred Browne, December 11, 1916 | 345 | 597 |

| | Original | Print. |
|---|---|---|
| 253, Telegram, Thorn and Maginnis to Fred Browne, December 11, 1916 | 346 | 597 |
| 254, Telegram, Thorn and Maginnis to Fred Browne, December 11, 1916 | 346 | 597 |
| 255, Telegram, Fred Browne to Thorn and Maginnis, December 9, 1916 | 346 | 597 |
| 256, Telegram, Thorn and Maginnis to Fred Browne, December 13, 1916 | 346 | 598 |
| 257, Telegram, Thorn and Maginnis to Fred Browne, December 13, 1916 | 346 | 598 |
| 258, Telegram, Thorn and Maginnis to Fred Browne, December 13, 1916 | 346 | 598 |
| 259, Telegram, Thorn and Maginnis to Fred Browne, December 13, 1916 | 346 | 598 |
| 260, Telegram, Thorn and Maginnis to Fred Browne, December 13, 1916 | 346 | 599 |
| 261, Telegram, Thorn and Maginnis to Fred Browne, December 13, 1916 | 347 | 599 |
| 262, Telegram, Thorn and Maginnis to Fred Browne, December 13, 1916 | 347 | 599 |
| 263, Telegram, Thorn and Maginnis to Fred Browne, December 13, 1916 | 347 | 599 |
| 264, Telegram, Thorn and Maginnis to Fred Browne, December 13, 1916 | 347 | 599 |
| 265, Telegram, Thorn and Maginnis to Fred Browne, December 13, 1916 | 347 | 600 |
| 266, Telegram, Thorn and Maginnis to Fred Browne, December 14, 1916 | 347 | 600 |
| 267, Telegram, Thorn and Maginnis to Fred Browne, December 1, 1916 | 347 | 600 |
| 268, Telegram, Thorn and Maginnis to Fred Browne, December 16, 1916 | 347 | 600 |
| 269, Telegram, Thorn and Maginnis to Fred Browne, December 18, 1916 | 348 | 601 |
| 270, Telegram, Thorn and Maginnis to Fred Browne, December 18 | 348 | 601 |
| 271, Telegram, Thorn and Maginnis to Fred Browne, December 18, 1916 | 348 | 601 |
| 272, Telegram, Thorn and Maginnis to Fred Browne, December 20 | 348 | 601 |
| 273, Telegram, Thorn and Maginnis to Fred Browne, December 20, 1916 | 348 | 601 |
| 274, Telegram, Thorn and Maginnis to Fred Browne, December 20, 1916 | 348 | 602 |
| 275, Telegram, Thorn and Maginnis to Fred Browne, December 20 | 348 | 602 |
| 276, Telegram, Thorn and Maginnis to Fred Browne, December 21, 1916 | 348 | 602 |
| 277, Telegram, Thorn and Maginnis to Fred Browne, December 21, 1916 | 249 | 602 |
| 278, Telegram, Thorn and Maginnis to Fred Browne, December 21, 1916 | 349 | 603 |
| 279, Telegram, Thorn and Maginnis to Fred Browne, December 21, 1916 | 349 | 603 |

| | Original | Print |
|---|---|---|
| 280, Telegram, Thorn and Maginnis to Fred Browne, December 21, 1916 | 349 | 603 |
| 281, Telegram, Thorn and Maginnis to Fred Browne, December 21, 1916 | 349 | 603 |
| 282, Telegram, Thorn and Maginnis to Fred Browne, December 22, 1916 | 349 | 604 |
| 283, Telegram, Thorn and Maginnis to Fred Browne, December 22, 1916 | 349 | 604 |
| 284, Telegram, Thorn and Maginnis to Fred Browne, December 23, 1916 | 349 | 604 |
| 285, Telegram, Thorn and Maginnis to Fred Browne, December 23, 1916 | 350 | 604 |
| 286, Telegram, Thorn and Maginnis to Fred Browne, December 26, 1916 | 350 | 605 |
| 286, Telegram, Thorn and Maginnis to Fred Browne, December 26, 1916 | 351 | 605 |
| 287, Telegram, Thorn and Maginnis to Fred Browne, December 26, 1916 | 251 | 605 |
| 288, Telegram, Thorn and Maginnis to Fred Browne, December 26, 1916 | 351 | 605 |
| 289, Telegram, Thorn and Maginnis to Fred Browne, December 26, 1916 | 351 | 606 |
| 290, Telegram, Thorn and Maginnis to Fred Browne, December 26, 1916 | 351 | 606 |
| 291, Telegram, Thorn and Maginnis to Fred Browne, December 26, 1916 | 251 | 606 |
| 292, Telegram, Thorn and Maginnis to Fred Browne, December 26, 1916 | 351 | 606 |
| 293, Telegram, Thorn and Maginnis to Fred Browne, December 27, 1916 | 351 | 607 |
| 294, Telegram, Thorn and Maginnis to Fred Browne, December 27, 1916 | 352 | 607 |
| 295, Telegram, Thorn and Maginnis to Fred Browne, December 27, 1916 | 352 | 607 |
| 296, Telegram, Thorn and Maginnis to Fred Browne, December 28, 1916 | 352 | 607 |
| 297, Telegram, Thorn and Maginnis to Fred Browne, December 28, 1916 | 352 | 608 |
| 298, Telegram, Thorn and Maginnis to Fred Browne, December 28, 1916 | 352 | 608 |
| 299, Telegram, Thorn and Maginnis to Fred Browne, December 28, 1916 | 352 | 608 |
| 300, Telegram, Thorn and Maginnis to Fred Browne, December 28, 1916 | 352 | 608 |
| 301, Telegram, Thorn and Maginnis to Fred Browne, December 28, 1916 | 353 | 609 |
| 302, Telegram, Thorn and Maginnis to Fred Browne, December 28, 1916 | 353 | 609 |
| 303, Telegram | 353 | 609 |
| 304, Telegram, Thorn and Maginnis to Fred Browne, December 28, 1916 | 353 | 609 |
| 305, Telegram, Thorn and Maginnis to Fred Browne, December 28, 1916 | 353 | 610 |

| | Original | Print. |
|---|---|---|
| 306, Telegram, Thorn and Maginnis to Fred Browne, December 28, 1916 | 353 | 610 |
| 307, Telegram, Thorn and Maginnis to Fred Browne, December 28, 1916 | 353 | 610 |
| 308, Telegram, Thorn and Maginnis to Fred Browne, December 28, 1916 | 354 | 610 |
| 309, Telegram | 354 | 611 |
| 310, Telegram | 354 | 611 |
| 311, Telegram, Thorn and Maginnis to Fred Browne, December 29, 1916 | 354 | 611 |
| 312, Telegram, Thorn and Maginnis to Fred Browne, December 29, 1916 | 354 | 611 |
| 313, Telegram, Thorn and Maginnis to Fred Browne, December 29, 1916 | 354 | 611 |
| 314, Telegram, Thorn and Maginnis to Fred Browne, December 29, 1916 | 354 | 612 |
| 315, Telegram, Thorn and Maginnis to Fred Browne, December 29, 1916 | 354 | 612 |
| 316, Telegram, Thorn and Maginnis to Fred Browne, December 29, 1916 | 355 | 612 |
| 317, Telegram, Thorn and Maginnis to Fred Browne, December 29, 1916 | 355 | 612 |
| 318, Telegram, Thorn and Maginnis to Fred Browne, December 29, 1916 | 355 | 613 |
| 319, Telegram, Thorn and Maginnis to Fred Browne, December 30, 1916 | 355 | 613 |
| 320, Telegram, Thorn and Maginnis to Fred Browne, January 3, 1917 | 355 | 613 |
| 321, Telegram, Thorn and Maginnis to Fred Browne, January 3, 1917 | 355 | 613 |
| 322, Telegram, Thorn and Maginnis to Fred Browne, January 3, 1917 | 355 | 614 |
| 323, Telegram, Thorn and Maginnis to Fred Browne, January 4, 1917 | 356 | 614 |
| 324, Telegram, Thorn and Maginnis to Fred Browne, January 4, 1917 | 356 | 614 |
| 325, Telegram, Thorn and Maginnis to Fred Browne, January 5, 1917 | 356 | 614 |
| 326, Telegram, Thorn and Maginnis to Fred Browne, January 5, 1917 | 356 | 615 |
| 327, Telegram, Thorn and Maginnis to Fred Browne, January 6, 1917 | 356 | 615 |
| 328, Telegram, Thorn and Maginnis to Fred Browne, January 6 | 356 | 615 |
| 329, Telegram, Thorn and Maginnis to Fred Browne, January 13, 1917 | 357 | 615 |
| 330, Telegram, Thorn and Maginnis to Fred Browne, January 6 | 357 | 616 |
| 331, Telegram, Thorn and Maginnis to Fred Browne, January 8, 1917 | 357 | 616 |
| 332, Telegram, Thorn and Maginnis to Fred Browne, January 9, 1917 | 357 | 616 |
| 333, Telegram, Thorn and Maginnis to Fred Browne, January 9, 1917 | 357 | 617 |

| | Original | Print |
|---|---|---|
| 334, Telegram, Thorn and Maginnis to Fred Browne, January 9, 1917 | 357 | 617 |
| 335, Telegram, Thorn and Maginnis to Fred Browne, January 9, 1917 | 358 | 617 |
| 336, Telegram, Thorn and Maginnis to Fred Browne, January 9, 1916 | 358 | 617 |
| 337, Telegram, Thorn and Maginnis to Fred Browne, January 9, 1917 | 358 | 618 |
| 338, Telegram, Thorn and Maginnis to Fred Browne, January 10, 1917 | 358 | 618 |
| 339, Telegram, Thorn and Maginnis to Fred Browne, January 10, 1917 | 358 | 618 |
| 340, Telegram, Thorn and Maginnis to Fred Browne, January 10 | 358 | 618 |
| 341, Telegram, Thorn and Maginnis to Fred Browne, January 10, 1917 | 358 | 619 |
| 342, Telegram, Thorn and Maginnis to Fred Browne, January 10, 1917 | 359 | 619 |
| 343, Telegram, Thorn and Maginnis to Fred Browne, January 10, 1917 | 359 | 619 |
| 344, Telegram, Thorn and Maginnis to Fred Browne, January 11, 1917 | 359 | 619 |
| 345, Telegram, Thorn and Maginnis to Fred Browne, January 11, 1917 | 359 | 620 |
| 346, Telegram, Thorn and Maginnis to Fred Browne, January 11, 1917 | 359 | 620 |
| 347, Telegram, Thorn and Maginnis to Fred Browne, January 11, 1917 | 359 | 620 |
| 348, Telegram, Thorn and Maginnis to Fred Browne, January 11, 1917 | 359 | 620 |
| 349, Telegram, Thorn and Maginnis to Fred Browne, January 11, 1917 | 360 | 621 |
| 350, Telegram, Thorn and Maginnis to Fred Browne, January 11, 1917 | 360 | 621 |
| 351, Telegram, Thorn and Maginnis to Fred Browne, January 12, 1917 | 360 | 621 |
| 352, Telegram, Thorn and Maginnis to Fred Browne, January 12, 1917 | 360 | 621 |
| 353, Telegram, Thorn and Maginnis to Fred Browne, January 12, 1917 | 360 | 622 |
| 354, Telegram, Thorn and Maginnis to Fred Browne, January 12, 1917 | 360 | 622 |
| 355, Telegram, Thorn and Maginnis to Fred Browne, January 12, 1917 | 360 | 622 |
| 356, Telegram, Thorn and Maginnis to Fred Browne, January 13, 1917 | 361 | 622 |
| 357, Telegram, Thorn and Maginnis to Fred Browne, January 13, 1917 | 361 | 623 |
| 358, Telegram, Thorn and Maginnis to Fred Browne, January 13, 1917 | 361 | 623 |
| 359, Telegram, Thorn and Maginnis to Fred Browne, January 16, 1917 | 361 | 623 |
| 360, Telegram, Thorn and Maginnis to Fred Browne, January 17, 1917 | 361 | 623 |

| | Original | Print. |
|---|---|---|
| 361, Telegram, Thorn and Maginnis to Fred Browne, January 17, 1917 | 361 | 624 |
| 362, Telegram, Thorn and Maginnis to Fred Browne, January 18, 1917 | 362 | 624 |
| 363, Telegram, Thorn and Maginnis to Fred Browne, January 19, 1917 | 362 | 624 |
| 364, Telegram, Thorn and Maginnis to Fred Browne, January 19, 1917 | 362 | 625 |
| 365, Telegram, Thorn and Maginnis to Fred Browne, January 20, 1917 | 362 | 625 |
| 366, Telegram, Thorn and Maginnis to Fred Browne, January 23, 1917 | 362 | 625 |
| 367, Telegram, Thorn and Maginnis to Fred Browne, January 22 | 362 | 625 |
| 368, Telegram, Thorn and Maginnis to Fred Browne, January 22 | 363 | 626 |
| 369, Telegram, Thorn and Maginnis to Fred Browne, January 22, 1917 | 363 | 626 |
| 370, Telegram, Thorn and Maginnis to Fred Browne, January 22, 1917 | 363 | 626 |
| 380, Telegram, Thorn and Maginnis to Fred Browne, January 22, 1917 | 363 | 626 |
| 381, Telegram, Thorn and Maginnis to Fred Browne, January 23, 1917 | 363 | 626 |
| 382, Telegram, Thorn and Maginnis to Fred Browne, January 23, 1917 | 363 | 627 |
| 383, Telegram, Thorn and Maginnis to Fred Browne, January 23, 1917 | 363 | 627 |
| 384, Telegram, Thorn and Maginnis to Fred Browne, January 22, 1917 | 364 | 627 |
| 385, Telegram, Thorn and Maginnis to Fred Browne, January 23, 1917 | 364 | 627 |
| 386, Telegram, Thorn and Maginnis to Fred Browne, January 23, 1917 | 364 | 627 |
| 387, Telegram, Thorn and Maginnis to Fred Browne, January 23, 1917 | 364 | 628 |
| 388, Telegram, Thorn and Maginnis to Fred Browne, January 24, 1917 | 364 | 628 |
| 389, Telegram, Thorn and Maginnis to Fred Browne, January 24, 1917 | 364 | 628 |
| 390, Telegram, Thorn and Maginnis to Fred Browne, January 24, 1917 | 364 | 628 |
| 391, Telegram, Thorn and Maginnis to Fred Browne, January 24, 1917 | 365 | 628 |
| 392, Telegram, Thorn and Maginnis to Fred Browne, January 24, 1917 | 365 | 629 |
| 393, Telegram, Thorn and Maginnis to Fred Browne, January 25, 1917 | 365 | 629 |
| 394, Telegram, Thorn and Maginnis to Fred Browne, January 25, 1917 | 365 | 629 |
| 395, Telegram, Thorn and Maginnis to Fred Browne, January 25, 1917 | 365 | 629 |
| 396, Telegram, Thorn and Maginnis to Fred Browne, January 26, 1917 | 365 | 629 |

| | Original | Print. |
|---|---|---|
| 397, Telegram, S. N and Company to Fred Browne, January 26, 1917 | 365 | 630 |
| 398, Telegram, Thorn and Maginnis to Fred Browne, January 26, 1917 | 366 | 630 |
| 399, Telegram, Thorn and Maginnis to Fred Browne, January 27, 1917 | 366 | 630 |
| 400, Telegram, Thorn and Maginnis to Fred Browne, January 27, 1917 | 366 | 630 |
| 401, Telegram, Thorn and Maginnis to Fred Browne, January 29, 1917 | 366 | 631 |
| 402, Telegram, Thorn and Maginnis to Fred Browne, January 29, 1917 | 366 | 631 |
| 403, Telegram, Thorn and Maginnis to Fred Browne, January 29, 1917 | 366 | 631 |
| 404, Telegram, Thorn and Maginnis to Fred Browne, January 29, 1917 | 367 | 631 |
| 405, Telegram, Thorn and Maginnis to Fred Browne, January 29, 1917 | 367 | 632 |
| 406, Telegram, Thorn and Maginnis to Fred Browne, January 30, 1917 | 367 | 632 |
| 407, Telegram, Thorn and Maginnis to Fred Browne, January 30, 1917 | 367 | 632 |
| Court's Instructions to the Jury and Exceptions thereto | 393 | 650 |
| Additional Instructions to the Jury | 403 | 657 |
| Verdict | 404 | 658 |
| Motion for New Trial and Exception to the ruling of the Court thereon | 404 | 658 |
| Defendant granted 90 days time to file Bill of Exceptions | 419 | 673 |
| Prayer for the allowance of Bill of Exceptions, etc | 419 | 673 |
| Certificate of Judge to Bill of Exceptions | 420 | 674 |
| Clerk's Certificate to Transcript | 421 | 674 |
| Proceedings in U. S. Circuit Court of Appeals | 675 | 675 |
| Appearance of Counsel for Plaintiff in Error | 675 | 675 |
| Appearance of Mr. Ira D. Oglesby and Mr. Ben Cravens as Counsel for Defendants in Error | 675 | 675 |
| Appearance of Mr. Joseph E. Johnson as Counsel for the Defendants in Error | 676 | 675 |
| Order of Submission | 676 | 675 |
| Order submitting case to third Judge | 676 | 676 |
| Opinion, U. S. Circuit Court of Appeals | 677 | 676 |
| Judgment, U. S. Circuit Court of Appeals | 683 | 681 |
| Petition for Writ of Error from Supreme Court, U. S., and allowance thereof | 684 | 682 |
| Assignment of Errors on Writ of Error from Supreme Court, U. S. | 686 | 683 |
| Cost Bond on Writ of Error from Supreme Court, U. S. | 696 | 691 |
| Supersedeas Bond on Writ of Error from Supreme Court, U. S. | 697 | 692 |
| Stipulation as to Supersedeas Bond and Cost Bond | 698 | 693 |
| Writ of Error from Supreme Court, U. S., and Clerk's Return | 700 | 693 |
| Citation on Writ of Error from Supreme Court, U. S. | 701 | 695 |
| Clerk's Certificate to Transcript | 702 | 696 |
| Writ of Certiorari and Return | 703 | 697 |

a Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the December Term, 1920, of said Court, before the Honorable Walter H. Sanborn and the Honorable William C. Hook, Circuit Judges, and the Honorable Tillman D. Johnson, District Judge.

Attest:
(Seal)

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it Remembered that heretofore, to-wit: on the twenty-sixth day of April, A. D. 1920, a transcript of record pursuant to a writ of error directed to the District Court of the United States for the Western District of Arkansas, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein Fred Browne was Plaintiff in Error and Charles B. Thorn, et al. partners doing business as Thorn and Maginnis, were Defendants in Error, which said transcript as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, is in the words and figures following, to-wit:

1 (Citation and Acknowledgment of Service.)

United States of America To Charles B. Thorn, William T. Maginnis, Samuel C. Coleman, and Miles J. Kehoe, partners doing business as Thorn & Maginnis,—Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the day this Citation bears date, pursuant to a writ of error, filed in the Clerk's office of the District Court of the United States for the Western District of Arkansas, wherein Fred Browne is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Frank A. Youmans, Judge of the District Court of the United States for the Western District of Arkansas, this 28th day of February in the year of our Lord one thousand nine hundred and Twenty.

FRANK A. YOUMANS,
Judge United States District Court
for the Western District of Arkansas.

Service of the within citation is hereby acknowledged, service of the same by an officer being waived.

JOS. E. JOHNSON.

This 28 day of Febry, 1920.

OGLESBY, CRAVENS & OGLESBY,
Attorneys for Charles B. Thorn,
W. T. Maginnis, Samuel C. Coleman and Miles J. Kehoe.

Endorsed: Filed in the District Court on March 1, 1920.

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2 (Writ of Error and Clerk's Return.)

United States of America:—ss.

The President of the United States of America, To the Honorable Judges of the District Court of the United States for the Western District of Arkansas—Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, at the January Term, 1920, thereof, between Charles B. Thorn, William T. Maginnis, Samuel C. Coleman, and Miles J. Kehoe, partners doing business as Thorn & Maginnis, Plaintiffs, and Fred Browne, Defendant, a manifest error hath happened, to the great damage of the said Fred Browne as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the Eighth Circuit, together with this writ, so that you have the said records and proceedings aforesaid at the City of St. Louis, Missouri, and filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Eighth Circuit, on or before the 28th day of April, 1920, to the end that the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Edward D. White, Chief Justice of the United States, this 28th day of February, in the year of our Lord one thousand nine hundred and Twenty.

Seal
U. S. Dist. Court,
West. Dist. of Ark.

Issued at office in the City of Fort Smith, Arkansas, with the seal of the District Court of the United States for the Western District of Arkansas, and dated as aforesaid.

WM. S. WELLSHEAR,
Clerk District Court United States,
Western District of Arkansas.

Allowed by:
Frank A. Youmans, Judge.

Return to Writ.

United States of America,
Western District of Arkansas—ss.

In obedience to the command of the within Writ, I herewith transmit to the United States Circuit Court of Appeals, for the Eighth Circuit, a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

Seal
U. S. Dist. Court,
West. Dist. of Ark.

In Witness Whereof, I hereunto subscribe my name and affix the seal of said United States District Court, for the Western Disfrict of Arkansas, at office in the City of Fort Smith, Arkansas, this 23 day of April, A. D., 1920.

WM. S. WELLSHEAR,
Clerk District Court of the United States,
Western District of Arkansas.

Endorsed: Filed in the District Court on February 28, 1920.

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3 District Court of the United States, Western District of Arkansas, Fort Smith Division.

Charles B. Thorn, William T. Maginnis, Samuel C. Coleman and Miles J. Kehoe, partners doing business as Thorn & Maginnis, Plaintiffs,

No. 695. vs. Law.

Fred Browne, Defendant.

Record of proceedings in the District Court of the United States for the Western District of Arkansas, Fort Smith Division, in the above entitled cause:

4 Complaint.

Filed in U. S. District Court April 11, 1917.

The plaintiffs, Charles B. Thorn, William T. Maginnis, Samuel C. Coleman, and Miles J. Kehoe, are citizens and residents of the Parish of Orleans, State of Louisiana, and doing business as Thorn & Maginnis.

That defendant, Fred Browne, is a citizen and resident of the County of Sebastian, in the State of Arkansas, and is an inhabitant of the said Fort Smith Division of the said Western District of Arkansas.

Between January 25th, 1917 and January 31st, 1917, inclusive, at the special instance and request of defendant, the plaintiffs bought for the account and risk of defendant, 2000 bales of cotton for delivery in the month of May, 1917, on the New Orleans Cotton Exchange, and subject to its by-laws, rules, and conditions, and subject also to the United States Cotton Futures Act, Section 5, the said purchases being in amounts on the dates, and at prices, as follows:

| | | | |
|---|---|---|---|
| 5 | January 25th, 1917, | 200 Bales at | 16.83 cents per lb. |
| | " " " | 400 Bales at | 16.84 cents per lb. |
| | " 27th, " | 200 Bales at | 17.06 cents per lb. |
| | " 29th, " | 400 Bales at | 17.08 cents per lb. |
| | " " " | 300 Bales at | 16.88 cents per lb. |
| | " 30th, " | 200 Bales at | 16.93 cents per lb. |
| | " 31st, " | 300 Bales at | 17.13 cents per lb. |

That on February 1st, 1917, at the special instance and request of defendant, the plaintiffs sold for the account and risk of defendant, 2000 Bales of Cotton for delivery in the month of May, 1917, on the New Orleans Cotton Exchange, and subject to its by-laws, rules and conditions, and subject also to the United States Cotton Futures Act, Section 5, at the price of 14 cents per lb.

That in and about the purchase and sale of said 2000 Bales of Cotton for delivery in the month of May, 1917, as shown in paragraphs 3 and 4 above, plaintiffs paid out and advanced for defendant, at his request and for his use, the sum of Twenty-Nine Thousand, Six Hundred and Seventy-Five Dollars ($29,675.00).

That defendant agreed to pay plaintiffs a commission, as fixed by the by-laws and rules of said New Orleans Cotton Exchange, of $7.50 per 100 bales for plaintiff's services in buying or selling said cotton, and defendant is therefore indebted to plaintiffs ... the sum of Three Hundred Dollars ($300.00) for services in buying and selling said 2000 bales of cotton.

That on February 1st, 1917, defendant had on deposit with plaintiffs the sum of $6760.00 and is entitled to a credit of that amount against the indebtedness due plaintiffs as set out above.

That the balance of $23,215.00 due plaintiffs by defendant has been demanded and defendant refuses to pay same.

6 A verified statement of said account being filed herewith, marked "Exhibit A" and made a part hereof.

Wherefore, plaintiffs demand judgment of defendant for $23,215.00 and legal interest from February 1st, 1917, until paid, and for costs.

JOS. E. JOHNSON and
OGLESBY, CRAVENS & OGLESBY,
Attorneys for Plaintiffs.

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7 Ex "A".

(Verified Statement of Thorn and Maginnis in account with Fred Browne.)

Jefferson C. Wenck
Notary Public
New Orleans, La.

State of Louisiana
Parish of Orleans

Before me, Jefferson C. Wenck, a Notary Public, in and for the Parish of Orleans, in the State of Louisiana, duly commissioned by the Executive authority of said State of Louisiana, and authorized under the laws of Louisiana to take the acknowledgment and proof of the execution of Deeds and other instruments in writing, and to administer oaths and affirmations, to be used or recorded in said State of Louisiana, personally came and appeared

Miles J. Kehoe, of the firm of Thorn and Maginnis, who, being by me, first duly sworn, deposes that the annexed account is correctly made out from the books of original entry of Fred Browne, that all the goods therein specified were so sold and delivered, at or about the dates and for the prices therein mentioned; that the prices therein charged are fair and reasonable, and the market prices at the time; that all the charges therein made are correct, and the said account as stated, is just and true; that the same is a just claim; that nothing whatever has been paid or delivered towards the satisfaction of said account, except what is credited therein; that there are no counter claims, credits, deductions or legal offsets, known to affiant, which have not been allowed; and that said sum of Twenty-three thousand two hundred and fifteen ($23,215.00) Dollars is justly claimed by, and now due, owing and remaining unpaid to Thorn and Maginnis by and from Fred Browne, no part thereof ever being paid or in any manner settled.

MILES J. KEHOE.

Sworn to and subscribed before me at New Orleans, La., this day of March 26th, A. D. 1917.

(Notarial Seal) JEFF. C. WENCK,
Not. Pub.

---

8 Account Current.

New Orleans, Mar 26 1917

Mr. Fred Browne - Crowder, Okla.

In Account with Thorn & Maginnis,

209 Varieties Place.

| 1916 | | | | | Dr. | 1916 | | | | | Cr. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Oct | 26 | To | | Cash | 5000. | Sept | 22 | By | | Cash | 1000. |
| " | 31 | " | 4 | July | 380. | Oct | 4 | " | | " | 200. |
| Nov | 10 | " | 4 | Jan | 435. | " | 5 | " | | " | 800. |
| " | " | " | 2 | May | 3010. | " | 11 | " | | " | 400. |
| " | 13 | " | | Cash | 3000. | " | " | " | 4 | Jan | 340. |
| " | 25 | " | 3 | Mch | 1020. | " | 19 | " | 5 | " | 1945. |
| " | 27 | " | 4 | Jan | 260. | " | 24 | " | 5 | " | 2130. |
| " | 28 | " | 4 | " | 760. | " | 25 | " | 5 | Dec | 3025. |
| Dec | 1 | " | 8 | " | 520. | Nov | 10 | " | 6 | Jan | 1160. |
| " | 2 | " | 4 | " | 260. | " | " | " | 2 | May | 2170. |
| " | 6 | " | 2 | " | 130. | " | 17 | " | 2 | Mch | 710. |
| " | 8 | " | 2 | " | 465. | " | " | " | 4 | Jan | 810. |
| " | 11 | " | 8 | Mch | 700. | " | 21 | " | 4 | " | 820. |
| " | 13 | " | 4 | May | 360. | " | 24 | " | 2 | Mch | 390. |
| " | " | " | 7 | Mch | 990. | Dec | 5 | " | 15 | " | 255. |
| " | " | " | 4 | Jan | 360. | " | 7 | " | 2 | Jan | 110. |
| " | 19 | " | 4 | Mch | 1910. | " | 8 | " | 4 | Mch | 1180. |
| " | 21 | " | 8 | " | 4055. | " | 11 | " | | Cash | 1500. |
| " | 26 | " | 5 | May | 170. | " | 16 | " | | " | 1000. |
| " | 28 | " | 7 | " | 605. | " | 18 | " | | " | 1000. |
| " | 29 | " | 6 | " | 530. | " | 19 | " | | " | 1500. |
| 1917 | | | | | | | | | | | |
| Jan | 10 | " | 5 | July | 25. | " | 20 | " | | " | 1200. |
| " | 11 | " | 1 | May | 90. | " | 22 | " | | " | 1000. |
| " | " | " | 1 | " | 90. | " | " | " | 2 | Mch | 20. |
| " | " | " | 3 | " | 260. | " | 26 | " | 2 | " | 315. |
| " | 12 | " | | Cash | 5000. | " | 28 | " | | Cash | 1500. |
| " | 13 | " | 8 | May | 1990. | " | " | " | 12 | May | 1565. |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | 1917 | | | | | |
| | 15 | " | 5 | " | 2725. | Jan | 3 | " | 2 " | 20. |
| " | 22 | " | 10 | " | 900. | " | 6 | " | Cash | 2000. |
| " | 23 | " | 2 | " | 180. | " | 9 | " | 10 May | 3320. |
| Feb | 1 | " | 20 | " | 29975. | " | 10 | " | 15 " | 625. |
| | | | | | | " | " | " | 5 " | 100. |
| | | | | | | " | 13 | " | Cash | 1600. |
| | | | | | | " | 22 | " | 5 Oct | 3225. |
| | | | | | | " | 23 | " | Cash | 1500. |
| | | | | | | " | 24 | " | 9 May | 80. |
| | | | | | | " | 25 | " | Cash | 2000. |
| | | | | | | " | 29 | " | 10 May | 425. |
| | | | | | | | | | Balance | 23215. |
| | | | 66155. | | | | | | | 66155. |
| | | Balance | 23215. | | | | | | | |

9 (Summons and Marshal's return.)

(Filed in the U. S. District Court, April 18, 1917.)

United States of America,
Western District of Arkansas,
Fort Smith Division

The President of the United States of America, to the Marshal of the Western District of Arkansas:

You are commanded to summon Fred Browne to answer within twenty days after service of summons, a complaint filed against him in the District Court of the United States for the Western District of Arkansas, Fort Smith Division, by Charles B. Thorn, William T. Maginnis, Samuel C. Coleman, and Miles J. Kehoe, partners doing business as Thorn & Maginnis, and warn him that upon his failure to answer, the complaint will be taken for confessed; and you will make due return of this summons on the first day that said court shall be in session after twenty days after the date of issuance hereof.

In Witness Whereof, the Honorable Frank A. Youmans, Judge of the District Court of the United States for the Western District of Arkansas, has caused the seal of said court to be hereto affixed this 11th day of April, A. D. 1917.

(Seal of Court)

WM. S. WELLSHEAR,
Clerk.

United States of America,
Western District of Arkansas
Fort Smith Division

This writ came to hand on the 11th day of April 1917 and I do hereby certify that I did upon date of April 16th 1917 duly serve same within the Fort Smith Division of said District at Fort Smith by delivering a true copy to the within named Fred Browne, as within I am commanded.

J. H. PARKER U. S. Marshal
By Phillip Ross Deputy.

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10 (Record entry, May 2, 1917, of the filing of motion to make Complaint more definite and certain.)

(Before Judge Youmans.)

This day the defendant by Messrs. Andrews & Anderson, his attorneys, files motion to require plaintiffs to make their complaint more definite and certain in the above entitled cause.

---

11 Motion to Make Complaint More Definite and Certain.

Filed in U. S. District Court May 2, 1917.

Comes now the defendant, Fred Browne, and moves the court to require the plaintiffs to make their complaint more definite and certain in this:

First: That they be required to state whether the cotton purchased for the defendant, alleged to have been at his special instance and request, was purchased upon the oral or written requests of defendant, and if the same was purchased by plaintiffs upon defendant's written requests that they be required to attach copies of such requests to their complaint herein.

Second: That plaintiffs be required to attach to their complaint the copies of by-laws, rules and conditions of the New Orleans Cotton Exchange, under which plaintiffs allege that cotton was purchased.

Third: That they be required to give the weights of the bales of cotton alleged to have been purchased by them upon the order and requests of defendant, and the markings and grades of the cotton so alleged to have been purchased.

Fourth: That plaintiffs be requested to state whether or not the special request of the defendant, alleged to have been

made upon the 1st of February, 1917, under which plaintiffs allege they sold for the account and risk of defendant 2,000 bales of cotton for delivery in the month of May, 1917, was made orally or in writing, and if made orally, that they give the substance of such order or request; and if in writing that they attach copy of same to their complaint.

Fifth: That they be required to attach to their com-
12 plaint copy of by-laws, rules and conditions of the New Orleans Cotton Exchange which plaintiffs allege to have governed the sale of said cotton.

And for reason of said motion defendant further says that without the information herein requested, he cannot properly prepare his defense herein.

Wherefore, upon said motion he prays judgment of the court.

ANDREWS & ANDERSON
Attorneys for Defendant.

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13 (Record entry, May 11, 1917, of the filing of response to motion to make Complaint more definite and certain.)

(Before Judge Youmans.)

This day come the plaintiffs by Messrs. Oglesby, Cravens & Oglesby, their attorneys, and file response to defendant's motion to rejuire the complaint to be made more definite and certain herein.

---

14 Response to Motion to Make Complaint More Definite and Certain.

Filed in U. S. District Court May 11, 1917.

Come the plaintiffs and in response to the motion of defendant to make their complaint more definite and certain herewith file a copy of the by-laws, rules and regulations of the New Orleans Cotton Exchange, under which the transactions for the sale and purchase of cotton were made; they also file herewith the telegrams sent and received directing the purchase and sale of the two thousand (2,000) bales of cotton mentioned in plaintiffs' complaint; they also attach the telegram of the defendant of date February 1st and their answer to said telegram, being the information requested by defendant in the 4th paragraph of its motion to have the complaint made more definite and certain.

In response to the 3rd paragraph of said motion that plaintiffs be required to give the weights of the bales of cotton alleged to have been purchased, plaintiffs say this is governed by the rules and by-laws of the New Orleans Cotton Exchange hereto attached, and further that the marking of the cotton covered by the purchase and sales mentioned in plaintiffs' complaint could not be known until the contract matured, and having closed before it matured under instructions of defendant, as shown by plaintiffs' complaint and the telegrams attached hereto, the same cannot be given.

JOS. E. JOHNSON
OGLESBY CRAVENS & OGLESBY
Attorneys for Plaintiff.

---

15 Jan 25 1917

To 30 2DA HG 9

Ex Ft Smith Ark 132P Jan 25 1917

Thorn and Maginnis
New Orleans

Buy Four Deposited Two Thousand Your Credit City National

FRED BROWNE 136P

---

Jan 25 1917

To 304DA HG 10 Duplicate and Corrected

Ex Ft Smith Ark 132P Jan 25 1917

Thorn and Maginnis
New Orleans La

Buy Four May Deposited Two Thousand Your Credit City National

FRED BROWNE 137½P

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Jan 25 1917

To Fred Browne
Ft Smith Ark

Buy Four May 84

T & M

---

Jan 25 1917

To 188DA HO 3

Ex Ft Smith Ark 1116 AM Jan 25 1917

Thorn & Maginnis
New Orleans La

Buy Two May

FRED BROWNE 1120AM

---

16 Jan 27 1917

To C1 3DA HZ 4

Ft Smith Ark 1021A Jan 27 1917

Thorn and Maginnis
NO LA

Buy Two May New Orleans

FRED BROWNE 1025½AM

---

To Fred Browne
Ft Smith Ark

Bought Two May 06

T & M

---

Jan 29 1917

To 79DA HG 3

Ex Ft Smith Ark 924 A Jan 29 1917

Thorn and Mag
New Orleans La

Buy Four May

FRED BROWNE 928A

---

Jan 29 1917

To Fred Browne
Ft Smith Ark

Bought Four May 08 Please Deposit Two Thousand Additional and Have Bank Confirm Promptly.

T & M

---

17 Jan 29 1917

To 3 21 DA HG 3

Ex Ft Smith Ark 1249P Jan 29 1917

Thorn and Maginnis
New Orleans La

Buy Three May

FRED BROWNE 1251P

---

Jan 29 1917

To Fred Browne
Ft Smith Ark

Bought Three May Eighty Eight

T & M

---

Jan 30 1917

To 109DA HO 4

Ft Smith Ark 950AM Jan 30 1917

Thorn & Mag
New Orleans La

Buy Two May No

FRED BROWNE 953AM

---

Jan 30 1917

To Fred Browne
Ft Smith Ark

Bot Two May 93

T & M

---

18 Jan 31 1917

To 75 S BO 7

Ex Ft Smith Ark 1035 A Jan 31 1917

Thorn & Maginnis
New Orleans La

Buy Three May New Orleans Stop Ten Loss

FRED BROWNE 1045 A

---

Jan 31 1917

To Fred Browne
Ft Smith Ark

Bought Three May Thirteen

T & M

---

Feb 1 1917

To 17DA HO 8

Fort Smith Ark 830AM Feb 1 1917

Thorn & Mag
New Orleans La

Stop Ten Seventeen Twenty and Ten Seventeen Fifteen

FRED BROWNE 838AM

---

Feb 1 1917

To Fred Browne
Ft Smith Ark

Sold Twenty May Fourteen Cents

T & M

---

19 (Motion to make complaint more definite and certain sustained in part and overruled in part, June 11, 1917.)

(Before Judge Youmans.)

Defendant's motion to require plaintiffs to make their complaint more definite and certain having been heretofore argued by counsel and submitted, the court being now well and sufficiently advised in the premises, the said motion is sustained as to the second paragraph and as to the fifth paragraph, and is denied as to the third paragraph. Plaintiffs appear to have complied with the first and fourth paragraphs of said motion and therefore no order is made with reference to them.

---

20 (Record entry, June 18, 1917, of the filing of response to paragraphs two and five of motion to make Complaint more definite and certain.)

(Before Judge Youmans.)

This day come the plaintiffs by Messrs. Oglesby, Cravens & Oglesby, their attorneys, and file response to paragraphs two and five of the motion to make complaint more definite and certain in the above entitled cause.

---

21 Response to Paragraphs Two and Five of Motion to Make Complaint More Definite and Certain.

Filed in U. S. District Court June 18, 1917.

Come the plaintiffs in response to paragraphs 2 and 5 of defendant's motion to require plaintiffs to make their complaint more definite and certain and attach hereto, and ask to be made a part of plaintiff's complaint, Articles 1, 2 and 3 of the Constitution of the New Orleans Cotton Exchange and the following Rules of the New Orleans Cotton Exchange governing the transaction of future business, to-wit:

Rule 1 with amendments thereto; Rule 2, Rule 3, Rule 13, Rule 17, Rule 23, Rule 26, Rule 27, Rule 39, Rule 41, Rule 42, Rule 43, Rule 44, Rule 47, Rule 49, Rule 50 and amendments thereto, and Rule 18 of the General Rules of said New Orleans Cotton Exchange.

JOS. E. JOHNSON &
OGLESBY CRAVENS & OGLESBY
Attys for Plfs.

---

22 (Record entry, June 22, 1917, of the filing of motion to strike out amendment to the Complaint.)

(Before Judge Youmans.)

This day comes defendant by James B. McDonough, his attorney, and files motion to strike from the files the amendment to the complaint filed by plaintiffs on June ...., 1917, in the above entitled cause.

---

23 (Motion to strike out amendment to the Complaint.)

(Filed in the U. S. District Court, June 22, 1917.)

Comes now the defendant, Fred Browne, and moves the court to strike from the files the amendment filed by plaintiffs to their complaint on the .... day of June, 1917, same being filed in response to the court's order made on the 11th day of June, 1917, sustaining paragraphs two and five (2 and 5) of defendant's motion to make plaintiffs' complaint more definite and certain, and for reasons for striking said amendments from the files, defendant says that the same does not comply with the court's order in that plaintiffs do not attach to their complaint and make the same a part thereof copies of the by-laws, rules, regulations and conditions of the New Orleans Cotton Exchange, under which plaintiffs allege the cotton was purchased, and neither do plaintiffs attach to their complaint

and make the same a part thereof, a copy of the by-laws, rules, regulations and conditions of the New Orleans Cotton Exchange which plaintiffs allege governed the sale of said cotton.

Wherefore, defendant prays that said amendment be stricken from the files and plaintiffs be required to comply with the court's order herein.

READ & McDONOUGH
ANDREWS & ANDERSON
Attorneys for Defendant.

---

24 (Order, June 23, 1917, overruling Motion to strike out amendment to the Complaint.)

(Before Judge Youmans.)

This day come plaintiffs by Messrs. Oglesby, Cravens & Oglesby, their attorneys, and comes defendant by James B. McDonough, his attorneys, and comes on to be heard defendant's motion to strike out plaintiffs' response to paragraphs two and five of motion to make complaint more definite and certain, and the court being well and sufficiently advised in the premises doth overrule the said motion to strike. To the action of the court in overruling said motion defendant duly excepted at the time.

Whereupon, defendant files demurrer to the complaint herein.

---

25 Demurrer to Complaint.

Filed in U. S. District Court June 23, 1917.

Comes now Fred Browne and demurs to the complaint filed herein and for reason of said demurrer states that the matters and things set forth in said complaint do not constitute cause of action in law in favor of the plaintiffs and against the defendant herein.

Wherefore, he prays judgment of this court.

ANDREWS & ANDERSON
Attorneys for Defendant.

---

26 (Order of submission of Demurrer to Complaint, June 25, 1917.)

(Before Judge Youmans.)

This day come the plaintiffs by Messrs. Oglesby, Cravens & Oglesby, their attorneys, and comes the defendant by James B. McDonough, his attorney, and comes on to be heard defendant's demurrer to the complaint herein, which is argued by counsel and submitted.

---

27 (Order, June 28, 1917, overruling Demurrer to Complaint, etc.)

(Before Judge Youmans.)

The demurrer to the complaint heretofore argued and submitted having been duly considered, the court being now well and sufficiently advised in the premises, doth overrule said demurrer. To the action of the court in overruling said demurrer defendant duly excepted at the time.

It is thereupon ordered by the court that this cause be and is hereby set for trial July 3, 1917.

---

28 (Order July 2, 1917, overruling Demurrer, vacated and Demurrer reargued and submitted.)

(Before Judge Youmans.)

This day come plaintiffs by Messrs. Oglesby, Cravens & Oglesby, their attorneys, and comes defendant by Guy L. Andrews and James B. McDonough, his attorneys, and on motion of the defendant the order entered June 28, 1917, overruling the demurrer to the complaint herein is vacated and set aside.

Whereupon, said demurrer coming on to be heard anew is argued by counsel and submitted.

---

29 (Order, July 11, 1917, overruling Demurrer.)

(Before Judge Youmans.)

The demurrer to the complaint heretofore argued and submitted having been duly considered, the court being now well and sufficiently advised in the premises, doth overrule the same. To the action of the court in overruling said demurrer defendant duly excepted at the time.

---

30 (Record entry, July 14, 1917, of the filing of Answer and Counter-claim.)

(Before Judge Youmans.)

This day comes the defendant by Messrs. Read & McDonough, his attorneys, and files answer and counterclaim in the above entitled cause.

---

31 Answer And Counter-Claim.

Filed in U. S. District Court July 14, 1917.

Comes now the defendant, Fred Browne, and not waiving his demurrer hereinbefore filed, but insisting upon the same, for answer to the complaint filed herein denies generally and severally each and every allegation of the complaint, except where herein expressly admitted.

Defendant further denies that the [plaintiff] are a legal partnership authorized under the laws of the State of Louisiana to do business under the firm name of Thorn & Maginnis, and specifically denies that between January 25th, 1917, and January 31st, 1917, both inclusive, the plaintiffs, at the special instance and request of defendant, bought for the account and risk of defendant two thousand (2,000) bales of cotton for delivery in the month of May, 1917, on the New Orleans Cotton Exchange, and denies that any purchase, or pretended purchase, by them, in his behalf, was subject to the by-laws, rules and regulations or conditions of the New Orleans Cotton Exchange, and denies that any purchase was made by them in his behalf subject to or complying with the United States Cotton Futures Act, Section 5, and denies that said purchase was in the amounts and on the dates, or at the prices set forth in their complaint, and further denies that said plaintiffs, or either of them, at any time, on his behalf, entered into any valid and enforceable contract for the delivery of any cotton.

Your defendant further denies that on the 1st day of February, 1917, or at any other time, at the special instance and request of this defendant, plaintiffs sold for the account and risk of defendant two thousand (2,000) bales of cotton
32 for delivery in the month of May, 1917, on the New Orleans Cotton Exchange, and denies that any pretended sale that might have been made by them was subject to the rules, regulations and by-laws of said Cotton Exchange, and denies that any contract for the delivery of any cotton so alleged to have been sold by them was subject to or complied

with the requirements of the United States Cotton Futures Act, Section 5, or any other section of said Act, and denies especially that said plaintiffs were at said time authorized to sell, for him, any cotton at fourteen cents (14¢) per pound.

Defendant denies that in and about the purchase and sale of any cotton for future delivery in the month of May, 1917, as alleged in paragraphs three (3) and four (4) of plaintiff's complaint, that plaintiffs paid out and advanced, for defendant, at his request, or for his use, the sum of $29,675.00, or that they paid out or advanced for this defendant any other sums because of any valid contract for the future delivery of cotton, as in their complaint alleged.

Defendant further denies that he agreed to pay plaintiffs any commissions, as fixed by the by-laws and rules of said Cotton Exchange, or that he had any knowledge of such laws, rules or conditions, and further alleges that even if the rules, by-laws and conditions of said Cotton Exchange provided for the payment of $7.50 per one hundred (100) bales for services in buying or selling cotton, that the plaintiffs herein are not entitled to recover the same because of the pretended purchase and sales being void and unenforceable under the terms of the United States Cotton Futures Act.

Defendant admits that on the 1st day of February, 1917, these plaintiffs had in their possession the sum of $6,760.00, which was money belonging to him, but denies that they are entitled to a credit of that amount against any indebt-
33 edness alleged to be due plaintiffs, and denies that defendant was indebted to plaintiffs in any sum.

Defendant denies that there is a balance of $23,215.00 due plaintiffs by defendant, or any other sum, and denies that the matters and things alleged to have been set forth in their Exhibit "A" are true and correct.

Further pleading, defendant says that if the plaintiffs herein attempted to enter into any contracts for the purchase or sale of cotton for delivery in the month of May, 1917, that said contracts are null and void and unenforceable for the reason, first: That there was not affixed to said contracts any stamps, as required by Sections 11 and 12 of the United States Cotton Futures Act; nor did said pretended contracts comply with Section 4 of said Act, in that they were not in writing plainly stating or evidenced by written memorandum showing the terms of such contract, including the quantity of cotton involved and the names and addresses of the seller and the buyer in such contract, signed by the seller and the buyer, or

by any person in their behalf; nor were any of the sums alleged to have been paid by these plaintiffs paid because of any valid and enforceable contract within the terms and provisions and purview of said Act, nor were the sums of money advanced, as alleged in said complaint, but any pretended settlement made by these plaintiffs with any person was made in violation of the fourth [provisions] of Section 10 of said Futures Act, in this, that it was known, understood and agreed that such settlement could be made, and would be made, by the means of "set-offs" or "ring settlement", and not by the actual delivery of cotton mentioned in said contract.

Your defendant further says that any alleged or pretended contract entered into, or sought to have been entered into, by Thorn & Maginnis in behalf of this defendant, was, because of the things above stated, a criminal act and in violation
34 of the criminal laws of the United States, and any sums of money advanced, or alleged to have been advanced, by the said Thorn & Maginnis, was advanced by them in pursuance of a criminal undertaking initiated and concluded by the said Thorn & Maginnis in attempting to enter into contracts for the purpose of evading the payment of the taxes provided for in the United States Cotton Futures Act approved August 11th, 1916, and of the rules and regulations made in pursuance thereof; that the illegal agreements and understandings had with those persons, whose names are to this defendant unknown, but whose names are especially within the knowledge of the plaintiffs herein, were made without the connivance, consent or direction of the defendant herein, and your defendant alleges that such operations, pretended contracts or purported agreements were made with various and sundry brokers upon the Cotton Exchange designated by the Secretary of Agriculture as a bona fide Cotton Exchange located at New Orleans, Louisiana.

Further pleading, your defendant says that the sums sought to be recovered by the plaintiffs herein do not represent any balance due by reason of any valid transactions had upon the New Orleans Cotton Exchange or other places; that none of the cotton alleged to have been bought and sold was delivered, or was intended for delivery, nor could delivery have been enforced by virtue of transactions had with other brokers representing unknown clients for whom they pretended to act; but it was intended that said transactions should be settled by reason of the differences in the rise and fall of the market of said Cotton Exchange, and was to be settled by

paying or receiving a margin in each alleged contract, or by set-off or ring settlement, as hereinbefore set forth.

Your defendant further says that during all of the times mentioned in plaintiff's complaint he was a resident and
35 citizen of Fort Smith, Arkansas, and that all of the transactions had with the plaintiffs by your defendant were while he was such resident and citizen of the State of Arkansas; that the plaintiffs herein from time to time would furnish your defendant at Fort Smith, Arkansas, by mail or telegram, with what is known as market quotations, informing him of fluctuations in the price of cotton upon the Cotton Exchange at New Orleans, Louisiana.

Further, your defendant says that in his dealings with the plaintiffs herein he from time to time, upon their request and direction, deposited for them, and to their credit, in the banks at Fort Smith, Arkansas, various sums of money to be used as margins upon the trades or transactions by them pretended or alleged to have been made; that said sums were by said plaintiffs herein collected from the banks in Fort Smith, Arkansas, and were by them applied, or pretended to be applied, upon transactions conducted upon margins where sales for future delivery of cotton were made upon the Cotton Exchange at New Orleans, Louisiana; and defendant says further that any sums of money that might be due to the defendant herein from the plaintiffs herein by reason of any transactions had between them upon the Cotton Exchange aforesaid was to be paid to this defendant, and was from time to time paid to this defendant at Fort Smith, Arkansas; and that these matters and things on the part of the plaintiffs herein were in violation of the laws of the State of Arkansas, and that the sums of money they now seek to recover were sums of money alleged to have been expended by them in furtherance of the transactions so violating the laws of the state of Arkansas.

Your defendant therefore says that each and all of the alleged transactions were gaming transactions, wrongfully entered into by the plaintiffs, who knew them to be wrongful, and were illegal and against public policy, and are null, void and not enforceable in this court by reason of the inhibition of the law in force, and public policy, as aforesaid.

36 Counter-Claim.

For counter-claim against the plaintiffs herein, defendant says that he adopts by reference each and every material allegation of his answer hereinbefore set forth, and further

alleges that said plaintiffs have, by reason of the matters and things set forth in their complaint, converted to their own use and benefit the sums of money at that time had in their possession that was the property of the defendant herein, that is to say, the sum of $6,760.00; that said plaintiffs now retain the same under the claim of ownership of said money.

Wherefore, your defendant prays that he recover judgment against the said plaintiffs in the sum of $6,760.00 and for all of his costs in this behalf laid out and expended.

ANDREWS & ANDERSON
Attorneys for Defendant.

State of Arkansas
County of Sebastian—ss.

Fred Browne, being first duly sworn, states that the matters and things set forth in the above and foregoing answer and cross-complaint are true.

FRED BROWNE

Subscribed and sworn to before me on this the 9th day of June, 1917.

(Notarial Seal)

E. E. SEXTON
Notary Public

My commission expires Feb. 20, 1921.

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37 (Memorandum of the Clerk of the District Court.)

(Note by Clerk of Trial Court: On July 30 and 31, 1917, a trial of the cause was had resulting in a verdict and judgment in favor of the defendant. From this judgment a writ of error was sued out returnable to the United States Circuit Court of Appeals for the Eighth Circuit, and on June 19, 1919, the mandate of the Circuit Court of Appeals reversing said judgment was filed in the trial court. The proceedings in the trial court pertaining to that trial and judgment are omitted from this transcript.)

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38 (Jury Impaneled; Trial, January 26, 1920.)

(Before Judge Youmans.)

This day come the plaintiffs by Messrs. Oglesby, Cravens & Oglesby and Clyde Going, their attorneys, and comes the defendant Fred Browne by James B. McDonough, his attor-

ney, and the parties announcing ready for trial come the following named persons as jurors, to-wit:

| | | |
|---|---|---|
| Sam Carrigan | F. B. Latta | G. L. Hatcher |
| J. S. Ruble | J. M. Lewis | J. M. Hopkins |
| R. A. Bishop | George Vansandt | O. C. Smith |
| Emil Ballman | J. F. Durham | J. H. Cole |

twelve good and qualified electors of the Western District of Arkansas, Fort Smith Division, duly selected, impaneled and sworn to try the issues joined. Having heard the evidence adduced at the hour of adjournment the further consideration of this cause is postponed until tomorrow morning, 8½ o'clock, and the jury permitted to separate under the admonition of the court until that hour.

---

39 (Trial, January 27, 1920.)

(Before Judge Youmans.)

This day come the parties hereto by their attorneys and comes the jury heretofore impaneled and sworn herein as on yesterday and the trial of this cause proceeds. Having heard the evidence adduced at the hour of adjournment the further consideration of this cause is postponed until tomorrow morning, 9 o'clock, and the jury permitted to separate under the admonition of the court until that hour:

---

40 (Trial, January 28, 1920.)

(Before Judge Youmans.)

This day come the parties hereto by their attorneys and comes the jury heretofore impaneled and sworn herein as on yesterday and the trial of this cause proceeds. Having heard the remainder of the evidence at the hour of adjournment the further consideration of this cause is postponed until tomorrow morning, 9 o'clock, and the jury permitted to separate under the admonition of the court until that hour.

---

41 (Trial, January 29, 1920.)

(Before Judge Youmans.)

This day come the parties hereto by their attorneys and comes the jury heretofore impaneled and sworn herein as on yesterday and the trial of this cause proceeds. Having heard the argument of counsel and receiving the charge of the court the jury retired for deliberation, and not having agreed

upon a verdict at the hour of adjournment the further consideration of this cause is postponed until tomorrow morning, 9 o'clock, and the jury permitted to separate under the admonition of the court until that hour.

---

42 (Trial, Verdict and Judgment, January 30, 1920.)

(Before Judge Youmans.)

This day comes the jury heretofore impaneled and sworn herein as on yesterday and retire for deliberation, and after deliberation return into court the following verdicts, to-wit:

"We, the Jury, find in favor of the plaintiffs upon defendant's counterclaim.

EMIL BALLMAN, Foreman."

"We, the Jury, find for the plaintiffs in the sum of $23215.00 with interest at the rate of 6% from Feb. 8th 1917.

EMIL BALLMAN, Foreman."

Whereupon, the jury is discharged from the further consideration of this cause.

And now upon the verdicts of the jury here returned: It is by the court considered, ordered and adjudged that the defendant Fred Browne take nothing upon his counterclaim herein.

It is by the court further considered, ordered and adjudged that the plaintiffs Charles B. Thorn, William T. Maginnis, Samuel C. Coleman and Miles J. Kehoe, partners doing business as Thorn & Maginnis, have and recover of and from the defendant Fred Browne the sum of Twenty-Seven Thousand Three Hundred and Sixty-Two and 74/100 Dollars, (being the said sum of $23,215.00 with interest thereon at the rate of six per cent per annum from February 8, 1917, to this date, such interest amounting to $4147.74), together with all costs by the said plaintiffs in this behalf laid out and expended, for which execution may issue.

---

43 (Order, February 2, 1920, allowing time to file motion for New Trial.)

(Before Judge Youmans.)

On application of the defendant by James B. McDonough, his attorney, it is ordered that the defendant be and is hereby allowed until Thursday, February 5, 1920, to file motion for new trial in the above entitled cause.

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44 (Record entry, February 5, 1920, of the filing of motion for New Trial.)

(Before Judge Youmans.)

This day comes the defendant by James B. McDonough, his attorney, and files motion for new trial in the above entitled cause.

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(Note by Clerk of Trial Court: The Motion for New Trial appears in this transcript as a part of the Bill of Exceptions and is therefore not copied here.)

---

45 (Order, February 6, 1920, overruling Motion for New Trial and Allowing time to file Bill of Exceptions.)

(Before Judge Youmans.)

This day come the plaintiffs by Ben Cravens and Ira D. Oglesby, Jr. their attorneys, and comes the defendant by James B. McDonough, his attorney, and comes on to be heard defendant's motion for new trial in the above entitled cause. The said motion being argued by counsel and submitted, the court being well and sufficiently advised in the premises doth overrule the same. To the action of the court in overruling said motion defendant duly excepted at the time.

On application the defendant is allowed sixty days from this date in which to file bill of exceptions herein.

---

46 Petition for Writ of Error.

Filed in U. S. District Court February 28, 1920.

Comes the defendant and plaintiff in error, Fred Browne, and petitions the court for a writ of error herein.

In support of this petition for a writ of error, Fred Browne states that in a cause pending in the United States District Court, for the Western District of Arkansas, Fort Smith Division, wherein Charles B. Thorn, W. D. Maginnis, Samuel C. Coleman, and Miles J. Kehoe were plaintiffs, and Fred Browne was defendant, said cause being numbered 695 Law in said United States District Court, and said cause on the issues joined between the plaintiffs therein and the defendant, came on for a hearing on the 26th day of January 1920. After the introduction of evidence by the plaintiffs and the defendant

in said cause, and after the court's charge, a verdict was rendered in favor of the plaintiffs in said cause in the sum of $23,215.00, and interest, as shown in the verdict in said cause, and a judgment was entered thereon against the defendant, Fred Browne, which said judgment was entered on the 30th day of January, 1920. On the 31st day of January, 1920, and within the time allowed by the court, the defendant, Fred Browne, filed a motion for a new trial in said cause. On February 6, 1920, the said motion for a new trial came on for hearing, and was argued and submitted to the court. On the same day, to-wit: February 6, 1920, the court overruled said motion for a new trial, and the defendant at the time excepted. Fred Browne, feeling aggrieved by said judgment and the action of the court in rendering the same, and in ruling on the motion for a new trial, as shown in the premises in said cause,

47 alleges that in the judgment and proceedings and prior to said judgment in said cause, certain errors were committed to the prejudice of the said Fred Browne, the plaintiff in error in the Circuit Court of Appeals, and the defendant in said cause in the District Court of the United States, Western District of Arkansas, Fort Smith Division, all of which said errors will in detail appear in the assignment of errors of said Fred Browne, which said assignment of errors is filed herewith and made a part of this petition in error, and to which assignment of errors reference is made for a specific statement of each error occurring at the trial of said cause.

Your petitioner also attaches hereto and makes a part hereof, when duly signed and approved the bill of exceptions in this cause, wherein all of the evidence of both plaintiff and defendant and all rulings of the court on the admission and exclusion of testimony is fully set forth.

Wherefore, your petitioner, Fred Browne, the defendant in said cause in the court below and plaintiff in error in the Court of Appeals of the Eighth Circuit, prays that a writ of error may issue in his behalf to the United States Ditsrict Court for the Western District of Arkansas, Fort Smith Division, for the correction of the errors complained of and fully set out in the assignment of errors and in the record and further that a transcript of the record proceedings and all papers, and the bill of exceptions in this cause duly authenticated may be sent to the Circuit Court of Appeals of the Eighth Circuit, and that upon a hearing in the Circuit Court of Appeals of the Eighth Circuit, the judgment herein complained of be re-

versed and set aside and the cause remanded to the court below.

FRED BROWNE,
By James B. McDonough,
His Attorney of Record.

---

48 Assignment of Errors.

Filed in U. S. District Court February 28, 1920.

Comes Fred Browne, the plaintiff in error in the Circuit Court of Appeals of the Eighth Circuit, and the defendant in the cause as it existed and was tried in the United States District Court for the Western District of Arkansas, Fort Smith Division, and files the following assignment of errors, appearing upon the record in this cause, upon which said Browne will rely, upon his appeal from the decision and judgment of the said United States District Court for the Western District of Arkansas, Fort Smith Division, which judgment was made and entered of record in said court on the 30th day of January, 1920. The said assignment of errors is in words and figures as follows:

1.

The court erred in admitting in testimony any evidence whatever on the ground that no compliance with the Cotton Futures Act was shown, and that no cause of action was stated in the complaint, and that there was not in the complaint any allegation that any actual delivery of the cotton in controversy was intended, and that said alleged contracts did not comply with the United States Treasury Regulations.

2.

The court erred in admitting the telegram from Fred Browne, to Thorn & Maginnis, dated January 25, 1917.

3.

The court erred in admitting in evidence the following from the testimony of Miles J. Kehoe:

49 "Upon the receipt of this telegram what did you do?

A. Well, I saw Mr. Coleman buy the 400 bales of May cotton. He marked the price on the telegram at 84. It was 16.84¢. He handed it to me and I advised Mr. Browne by wire."

4.

The court erred in admitting in testimony the following telegram from the plaintiffs to the defendant: "Fred Browne, Fort Smith, Arkansas. Bought 4 May 84. Thorn & Maginnis."

5.

The court erred in admitting in evidence telegram reading as follows:

"January 25, 1917. Thorn & Maginnis, New Orleans. Buy 2 May. Fred Browne."

6.

The court erred in admitting in evidence the following telegram:

"Thorn & Maginnis, New Orleans. Buy 2 May. Fred Browne."

7.

The court erred in permitting the witness, Kehoe, to testify to the execution of the above named order.

8.

The court erred in admitting in testimony the following telegram:

"Fred Browne, Fort Smith, Ark. Bought two May 83."

9.

The court erred in admitting in testimony the following telegram:

"January 27, 1917. Thorn & Maginnis, New Orleans, La. Buy 2 May New Orleans. Fred Browne."

10.

The court erred in admitting in testimony the evidence of Miles J. Kehoe, stating that he saw Coleman, one of the plaintiffs execute the order, buying the order at 17.06.

11.

50 The court erred in admitting in testimony the following telegram, dated January 27, 1917:

"Thorn & Maginnis, New Orleans, La. Buy 2 May New Orleans. Fred Browne."

12.

The court erred in admitting in testimony the following telegram dated New Orleans, Jan. 27, 1917:

"Fred Browne, Fort Smith, Arkansas. Bought 2 May 17.06."

13.

The court erred in admitting in evidence plaintiff's exhibit number 6, being a telegram from Thorn & Maginnis to Fred Browne.

14.

The court erred in admitting in evidence the testimony of Kehoe as to the execution of the order last named.

15.

The court erred in admitting in evidence the plaintiffs' exhibit numbered 7, being a telegram to Thorn & Maginnis from Fred Browne.

15a.

The court erred in admitting in testimony plaintiffs' exhibit numbered 8, being a telegram from Thorn & Maginnis to Fred Browne.

16.

The court erred in admitting the witness, Miles J. Kehoe to testify as to the execution of the order contained in said telegram.

17.

The court erred in admitting in evidence plaintiff's exhibit numbered 9, being a telegram to Thorn & Maginnis from Fred Browne.

18.

The court erred in admitting in evidence the testimony of Kehoe as to the execution of the order contained in said telegram.

51

19.

The court erred in admitting in evidence plaintiffs' exhibit No. 10 being a telegram to Fred Browne from Thorn & Maginnis.

20.

The court erred in admitting in evidence plaintiff's Exhibit numbered 11, being a telegram to Thorn & Maginnis from Fred Browne.

21.

The court erred in admitting in evidence the testimony of the witness, Kehoe, as to what was done under the authority of that telegram.

22.

The court erred in admitting in evidence plaintiffs' Exhibit Numbered 12, being a telegram from Thorn & Maginnis to Fred Browne.

23.

The court erred in admitting in evidence plaintiffs' Exhibit Number 13, being a telegram from Fred Browne to Thorn & Maginnis, dated January 31, 1917.

24.

The court erred in admitting in evidence plaintiff's exhibit numbered fourteen, being a telegram from Thorn & Maginnis to Fred Browne.

25.

The court erred in admitting in testimony the evidence of witness, Kehoe, as to what was done under the authority of that telegram.

26.

The court erred in permitting the plaintiff to introduce in evidence the following telegram addressed to Thorn & Maginnis, New Orleans: "Stop ten 17.20 and ten 17.15. Fred Browne."

52

27.

The court erred in permitting the witness, Kehoe, to testify what he did upon plaintiffs receiving that telegram.

28.

The court erred in admitting in testimony plaintiffs' exhibit numbered fifteen, being a telegram referred to above.

29.

The court erred in admitting in testimony plaintiffs' exhibit numbered sixteen, said exhibit being a telegram dated February 1, 1917, addressed to Fred Browne, and reading as follows:

"Sold twenty May 14 cents. Thorn & Maginnis."

30.

The court erred in permitting the witness, Kehoe, to explain the meaning of the words, "Buy four May."

31.

The court erred in permitting the witness, Kehoe, to testify from whom his firm bought the 400 bales of cotton referred to in the telegram above named.

32.

The court erred in permitting the witness, Kehoe, to testify that the plaintiffs bought 300 bales of cotton from Sylvan, Newburger & Company.

33.

The court erred in permitting said witness to testify that he bought 100 bales from C. P. Ellis & Company.

34.

The court erred in permitting said witness, Kehoe, to testify that Sylvan Newburger & Company and C. P. Ellis & Company were brokers and members of the New Orleans Cotton Exchange.

53

35.

The court erred in permitting said witness, Kehoe, to testify and explain the meaning of the telegram to buy 200 bales of May cotton.

36.

The court erred in permitting said witness to state that 100 bales was bought at 16.83 from C. P. Ellis & Company and 100 bales at 16.83 from Hayward Howard & Company.

37.

The court erred in permitting said witness, Kehoe, to testify that he bought 100 bales at 17.06 ¢ from J. M. Harrison & Company, and 100 bales at same price from Pincard & Kennedy.

38.

The court erred in permitting said witness, Kehoe, to testify that he bought 400 bales of May cotton at 17.08 from H. & B. Beer.

39.

The court erred in permtiting said witness, Kehoe, to testify that he bought 200 bales of May cotton from John F. Clark & Company at 16.93.

40.

The court erred in permitting said witness, Kehoe, to testify that his firm bought 100 bales from Felix Couturie & Company, and 200 bales from Shepard & Gluck, being the cotton described in plaintiffs' exhibit No. 15.

41.

The court erred in permitting the witness, Kehoe, to testify as to the meaning of the telegram reading: "Stop ten 17.20 and ten 17.15."

42.

The court erred in permitting said witness, Kehoe, to testify that the order to sell the 2000 bales meant that they
54 should sell it at the price named or at the next best possible price.

43.

The court erred in permitting said witness, Kehoe, to testify that in accordance with the custom of the New Orleans Cotton Exchange, an order to sell 1000 bales at 17.20 and 1000 bales at 17.15 meant that they must sell at 14 cents if that was the best price.

44.

The court erred in permitting the said Kehoe to testify that a telegram authorizing the sale of 2000 bales, one-half at 17.20 and one-half at 17.15 authorized the sale of 2000 bales at 14 cents.

45.

The court erred in permitting the said witness, Kehoe, to testify that the order to sell at 17.20 and 17.15 authorized the plaintiffs to sell at 14 cents.

46.

The court erred in permitting the plaintiff to introduce in evidence the contract slip showing the sale by C. P. Ellis & Company to Thorn & Maginnis of certain cotton.

47.

The court erred in permitting to be introduced in testimony the contract slip signed by C. P. Ellis & Company, being plain-

tiffs' exhibit numbered sixteen and one half, and dated January 25, 1917, and showing a purported sale to Thorn & Maginnis by C. P. Ellis & Company of 1000 bales of cotton.

48.

The court erred in permitting the witness, Kehoe, to select out of said 1000 bales certain cotton which he said belonged to Fred Browne.

49.

The court erred in permitting in evidence the two slips purporting to be signed by Hayward Howard & Company
55 and dated January 5, 1917, purporting to show the sale of 200 bales of cotton to Thorn & Maginnis.

50.

The court erred in permitting in testimony plaintiffs' exhibit numbered 18, being a contract or broker's slip dated January 25, 1917, signed by Sylvan Newburger & Company, purporting to show the sale to Thorn & Maginnis of 300 bales of cotton.

51.

The court erred in admitting in testimony plaintiffs' exhibit numbered nineteen, being a broker's slip or contract slip and purporting to be signed by Harrison & Lawrence, and purporting to show a sale to Thorn & Maginnis of 100 bales of cotton.

52.

The court erred in admitting to be introduced in testimony plaintiffs' exhibit No. 20, being a contract slip or broker's slip purporting to show a sale by Pincard & Kennedy to Thorn & Maginnis 100 bales of cotton.

53.

The court erred in permitting to be introduced in testimony plaintiffs' exhibit numbered 21, purporting to be a broker's or contract slip signed by H. D. Cothran & Company, purporting to show a sale to Thorn & Maginnis of 400 bales of cotton.

54.

The court erred in admitting in testimony plaintiffs' exhibit numbered 22, being a contract slip or brokers' slip signed by H. & B. Beer and purporting to show a sale to Thorn & Maginnis of 900 bales of cotton.

55.

The court erred in admitting in testimony plaintiffs' exhibit numbered 23, purporting to be a contract or brokers' slip signed by Pincard & Kennedy, purporting to show the sale to Thorn & Maginnis of 200 Bales of cotton.

56

56.

The court erred in admitting in testimony plaintiffs' exhibit number 24, being a brokers' or contract slip signed by John F. Clark & Company, purporting to show the sale to Thorn & Maginnis of 200 bales of cotton.

57.

The court erred in admitting in evidence plaintiffs' exhibit number 25, purporting to be a brokers' or contract slip signed by Felix Couturie & Company, purporting to show the sale to Thorn & Maginnis of 200 bales of cotton.

58.

The court erred in admitting in testimony plaintiffs' exhibit number 26, signed by Shepard & Gluck, purporting to be a contract or broker's slip, showing the sale to Thorn & Maginnis of 300 bales of cotton.

59.

The court erred in admitting in evidence plaintiffs' exhibit number 17, being a brokers or contract slip signed by Airey & Stouse, showing the purchase of 4000 bales of cotton by Airey & Stouse, said cotton claimed to have been purchased on February 1, 1917, from Thorn & Maginnis.

60.

The court erred in permitting the witness, Kehoe, to testify that it was not customary to place on the brokers slips the name of the customer of the broker.

61.

The court erred in admitting in testimony plaintiffs' exhibit numbered 28, being an alleged statement of the purchase and sale of 200 bales of cotton.

62.

The court erred in permitting the witness, Kehoe, to testify that the amount above named in the last assignment
57 was made out in accordance with the by-laws, rules and conditions of the New Orleans Exchange.

63.

The court erred in admitting in evidence plaintiffs' Exhibit number 29, being a telegram dated February 1, 1917, and addressed to Fred Browne, Fort Smith, Arkansas and reading:

"Please deposit amount due to balance account. Thorn & Maginnis."

64.

The court erred in admitting in testimony plaintiffs' exhibit numbered 30, being a telegram to Fred Browne, from Thorn & Maginnis, reading as follows:

"Kindly answer our wire asking for deposit. If cannot meet call in full now deposit what can and balance later. Awaiting reply by wire."

65.

The court erred in admitting in evidence telegram from Fred Browne to Thorn & Maginnis dated February 1, 1917, reading:

"Can you accept one-tenth now balance ten annual installments. Have borrowed limit."

66.

The court erred in admitting in evidence plaintiffs' exhibit number 32, being the telegram dated Feb. 2, 1917, addressed to Fred Browne, and being from Thorn & Maginnis.

67.

The court erred in admitting in evidence plaintiffs' exhibit number 33, being a telegram dated February 2, 1917, addressed to Fred Browne, from Thorn & Maginnis.

68.

The court erred in admitting in evidence plaintiffs' exhibit 34, being a telegram from Thorn & Maginnis to Fred Browne, dated February 2, 1917.

69.

The court erred in admitting in evidence telegram from Fred Browne to Thorn & Maginnis, dated February 2, 1917.

58

70.

The court erred in admitting in evidence plaintiffs' exhibit number 35, being a telegram dated February 2, 1917, addressed to Thorn & Maginnis from Fred Browne.

71.

The court erred in admitting in evidence plaintiffs' exhibit number 36, being a telegram dated February 5, 1917, from Thorn & Maginnis to Fred Browne.

72.

The court erred in admitting in evidence the testimony of the witness, Kehoe, as follows:

"Well, he (Brown) did admit the loss. He admitted sending the orders and also his offer of one-tenth cash and balance notes. In fact, I showed him the notes when I was out there at Crowder, Oklahoma. I went to Crowder and he admitted the purchase of the cotton and the sending in of the order and the offer of one-tenth cash."

73.

The court erred in admitting in testimony the following testimony from said Kehoe:

"He (Browne) said at the time that he felt that he was responsible for the loss, but that he afterwards had a talk with some of his friends who gave him to understand that he was not legally responsible."

74.

The court erred in admitting in testimony plaintiffs' exhibit numbered 38, being a statement of an account against Fred Browne and showing an alleged balance of $23,215.00.

75.

The court erred in permitting the witness, Sam C. Coleman, to testify that he bought cotton on the New Orleans Cotton Exchange for Fred Browne.

76.

The court erred in permitting said witness, Coleman, to testify that he bought 2000 bales of cotton for defendant, Fred Browne.

77.

59 The court erred in permitting said witness, Coleman, to testify that he bought for Fred Browne, cotton from Harrison & Lawrence, Pinckard & Kennedy, and from other brokers on the New Orleans Cotton Exchange.

78.

The court erred in permitting the said witness, Coleman, to testify that he bought 400 bales from H. & B. Beer for Fred Browne.

79.

The court erred in permitting the said witness, Coleman, to testify that he bought 200 bales from Cothran & Company.

80.

The court erred in permitting the witness, Coleman to testify that he bought 200 bales for Fred Browne, from John F. Clark & Company.

81.

The court erred in permitting the witness, Coleman to testify that he bought 100 bales from Felix Couturie & Company and 200 from Shepard & Gluck.

82.

The court erred in permitting the witness, Coleman, to testify that he sold for Fred Browne, 2000 bales of cotton on February 1, claiming said sale to Airey & Stouse.

83.

The court erred in permitting to be introduced in testimony the rules and regulations of the New Orleans Cotton Exchange, said rules and regulations being introduced as an exhibit to the testimony of Henry G. Hester.

60 85.

The court erred in permitting the witness, W. R. Leverich, to testify as to the transactions between Thorn & Maginnis and Fred Brown.

86.

The court erred in permitting said witness, Leverich, to testify concerning the purchase of one hundred bales of cotton from John F. Clark & Company, and one hundred bales from Hayward, Howard & Company.

87.

The court erred in permitting said witness to testify that the purchase of said cotton was for Fred Brown.

88.

The court erred in permitting the witness, Leverich, to testify that Thorn & Maginnis had bought cotton from Newburger & Company and Ellis & Company for Fred Brown.

89.

The court erred in permitting said witness to testify that Thorn & Maginnis bought cotton from J. M. Harrison & Company and Pinckard & Kennedy for Fred Brown.

90.

The court erred in permitting said witness, Leverich, to testify that Thorn & Maginnis bought cotton for Fred Brown from the H. & B. Beer, from H. D. Cothran & Company, from Pinckard & Kennedy and John F. Clark & Company, and from Felix Couturie & Company.

91.

The court erred in permitting said witness, Leverich, to testify that Thorn & Maginnis, on February 1st, sold to Airey & Stouse, two thousand bales of cotton for the account of Fred Brown.

92.

The court erred in permitting the plaintiffs to introduce plaintiffs' exhibit No. 39, which exhibit is in the following form:

61

"Plaintiff's Ex. 39
Thorn & Maginnis
Cotton Brokers
209 Varieties Place

New Orleans, ..... 191..

M .....
.....

We beg to confirm the following transactions in cotton for future delivery made this day for your account and risk, subject to the rules and regulations of the New Orleans Cotton Exchange and United States Cotton Futures Act, Section Five,

| Bought | | | | Sold | | | |
|---|---|---|---|---|---|---|---|
| Bales | Delivery | Price | Remarks | Sales | Delivery | Price | Remarks |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

On all marginal business we reserve the right to close transactions when margins are running out without further notice.

Limited orders are considered good only for the day on which they are received, unless marked "Open", which means they are in force until executed or cancelled.

All stop orders are considered Open unless otherwise specified.

E. & O. E. THORN & MAGINNIS
Per ....."

93.

The court erred in permitting plaintiffs to introduce plaintiffs' exhibit No. 40, alleged to be a confirmation of the purchase of three hundred bales of cotton by Thorn & Maginnis for Fred Brown.

94.

The court erred in admitting in evidence, plaintiffs' exhibit No. 41, being an alleged confirmation of the purchase of two hundred bales of cotton alleged to be purchased by Thorn & Maginnis for Fred Brown.

95.

The court erred in admitting in evidence plaintiffs' exhibit No. 42, which was claimed to be a confirmation of sale of seven hundred bales of cotton by Thorn & Maginnis for Fred Brown.

96.

The court erred in admitting in evidence plaintiffs' exhibit No. 43, being the alleged confirmation of the purchase of two hundred bales of cotton by Thorn & Maginnis for Fred
62 Brown.

97.

The court erred in admitting in testimony plaintiff's exhibit No. 44, being an alleged confirmation of the purchase of six hundred bales by Thorn & Maginnis for Fred Brown.

98.

The court erred in admitting in evidence plaintiffs' exhibit No. 45, being an alleged confirmation of the sale of two thousand bales of cotton, said confirmation being dated February 1, 1917.

99.

The court erred in admitting in testimony the evidence of L. P. Barkdull and each and every question and answer addressed to and made by said L. P. Barkdull.

100.

The court erred in permitting L. P. Barkdull to explain the meaning of a telegram, reading: Stop ten seventeen twenty and ten seventeen fifteen.

101.

The court erred in permitting L. P. Barkdull to testify that upon the receipt of the telegram by plaintiffs from defendant, described in the last assignment, plaintiffs had the right to sell the cotton at that price, or at the next best possible price.

102.

The court erred in permitting said L. P. Barkdull to say that upon the receipt of a telegram of that kind it was the duty of the plaintiffs to sell, it made no difference how much below that the actual price was.

103.

The court erred in permitting the witness, Charles B. Thorn, to testify that he had secured the name of the plaintiffs as cotton buyers from a book.

63

104.

The court erred in admitting in evidence each and every one of the telegrams passing between Thorn & Maginnis and Fred Brown, said telegrams being offered through the witness, Charles B. Thorn.

105.

The court erred in permitting the witness, Charles B. Thorn, to explain the meaning of the telegram reading: Stop ten seventeen twenty and ten seventeen fifteen.

106.

The court erred in permitting the witness, Charles B. Thorn, to testify to each and every exhibit numbered 16½ to 27 inclusive.

107.

The court erred in admitting in testimony exhibit "A" to the deposition of Charles B. Thorn, being a brokers slip be-

tween C. P. Ellis & Company and Thorn & Maginnis, said brokers slip being in words and figures as follows:

"Ex. A. J. K. P.

C. P. Ellis & Co.
502 Hibernia Bank Bldg.,

New Orleans, La. Jan. 25, 1917.

Bought From

C. P. Ellis & Co. of New Orleans, La., and agreed to receive from them subject to the By-Laws, Rules and Conditions of the

New Orleans Cotton Exchange

and subject to the United States Cotton Futures Act, Sec. 5, and amendments.

| Bales Cotton | Delivery | At Cents per Pound for Middling. |
|---|---|---|
| One Hundred | May | 16.70 |
| Three " | " | 16.83 |
| Two " | " | 16.83 |
| One " | " | 16.90 |
| Two " | " | 16.81 |
| One " | " | 16.84 |

Duplicate (Signed) THORN & MAGINNIS."

108.

The court erred in admitting in evidence, plaintiffs' exhibit "B" to the deposition of Charles B. Thorn, said exhibit being brokers slip, purporting to show that Hayward, Howard & Company purchased from Thorn & Maginnis two hundred bales of cotton.

64

109.

The court erred in admitting in testimony Exhibit "C" to the deposition of Charles B. Thorn, which exhibit is a brokers slip, purporting to show that Silvan Newburger & Company bought from Thorn & Maginnis three hundred bales of cotton.

110.

The court erred in admitting in testimony Exhibit "D" to the deposition of Charles B. Thorn, which exhibit is a brokers slip and purports to show the purchase by Thorn & Maginnis from Pinckard & Kennedy one hundred bales of cotton.

111.

The court erred in admitting in testimony plaintiffs' Exhibit "E" to the deposition of Charles B. Thorn, which purports to show the purchase by Thorn & Maginnis of Harrison & Lawrence one hundred bales of cotton.

112.

The court erred in admitting in evidence Exhibit "F" to the deposition of Charles B. Thorn, which is a brokers slip and purports to show purchase by Thorn & Maginnis from H. D. Cothran & Company of four hundred bales of cotton.

113.

The court erred in admitting in testimony Exhibit "G" to the deposition of Charles B. Thorn, which is a brokers slip and purports to show purchase by Thorn & Maginnis from from Pinckard & Company of two hundred bales of cotton.

114.

The court erred in admitting in testimony exhibit "H" of said Charles B. Thorn, which is a brokers slip and purports to show the purchase by Thorn & Maginnis from H. & B. Beer of one thousand bales of cotton.

115.

The court erred in admitting in testimony exhibit "I" to the deposition of said Charles B. Thorn, which is a brokers slip and purports to show the purchase by Thorn & Magin-
65 nis of two hundred bales of cotton from John F. Clark & Company.

116.

The court erred in admitting in testimony Exhibit "J" to the deposition of Charles B. Thorn, which is a brokers slip and which shows the purchase by Thorn & Maginnis from Shepard & Gluck of three hundred bales of cotton.

117.

The court erred in admitting in testimony Exhibit "K" to the deposition of Charles B. Thorn, which is a brokers slip and purports to show the purchase by Thorn & Maginnis from Felix Couturie & Company of two hundred bales of cotton.

118.

The court erred in admitting in testimony Exhibit "L" to the deposition of said Charles B. Thorn, which is a brokers

slip and purports to show the sale by Thorn & Maginnis to Airey & Stouse of four thousand bales of cotton.

119.

The court erred in refusing to permit plaintiff to prove by Charles B. Thorn the value of a seat on the New Orleans Cotton Exchange.

120.

The court erred in permitting plaintiff, Charles B. Thorn, to testify on re-direct examination, that he believed at the time they sold the 2000 bales of cotton to Airey & Stouse, that he was making a contract for the delivery of said cotton that was binding on Thorn & Maginnis.

121.

The court erred in permitting Charles B. Thorn to testify and say that at the time that he was dealing with Fred Brown, he did not know or believe Fred Brown was gambling in futures.

66

122.

The court erred in permitting the witness, Charles B. Thorn, to testify that on the New Orleans Cotton Exchange all contracts for the sale or delivery of cotton which are carried to maturity, deliveries are actually made thereon.

123.

The court erred in refusing to permit the defendant to prove by J. L. Burba that he had bought and sold futures through the firm of Thorn & Maginnis, and that in the purchase and sale of cotton with said firm, the said Burba had no intention to deliver it or to accept cotton under said contract.

124.

The court erred in refusing to permit the defendant to testify that there was nothing in the telegrams, letters or correspondence between him and Thorn & Maginnis that would lead him to believe that Thorn & Maginnis intended any delivery of the cotton.

125.

The court erred in his charge to the jury in using the following language: "You are instructed that the testimony shows that contracts were entered into by plaintiffs, and if you find from the testimony that such contracts were for defendant's benefit, and entered into at his request, and that the money alleged in plaintiffs' complaint to have been paid

out by them for defendant's benefit, was actually paid out by them for that purpose, and that they performed the services which they allege that they performed, then you are instructed that plaintiffs should recover, unless you find that such contracts were gaming contracts".

126.

The court erred in his charge, in using the following language:—"To invalidate the contracts, it must appear by a preponderance of the evidence that the intent not to deliver was a mutual intent; that is, it must appear that the intent of both parties at the time the contracts were made, was that there should be no delivery".

67

127.

The court in its general charge to the jury, erred in charging said jury as follows:—"Contracts for future delivery may be legally sold, transferred or cancelled prior to the date stipulated in those contracts for delivery. The sale, transfer or cancellation of such contracts is consistent with the existence of an intention to deliver at the time the contracts were entered into not to deliver. The intention of Browne at the time the contracts were made to sell prior to date of delivery, if he had such intention, was not sufficient to invalidate the contracts unless plaintiffs knew of such intention. You should therefore consider such sale, transfer or cancellation in connection with all of the other evidence in the case in order to determine what was the intention of the parties at the time the contracts were entered into. Reference was made in the testimony to what is termed hedging. Hedging is a means by which collectors, owners and exporters of cotton, or other products and manufacturers who make contracts in advance for the sale of their goods, secure themselves against the fluctuations of the market by counter-contracts for the purchase or sale, as the case may be, of an equal quantity of the product or of any material of manufacture. Such contracts are legal and if you find from the testimony that the contracts in this case were hedging contracts, then they were legal and enforceable, or, if you find that the plaintiffs believed that they were hedging contracts they are legal and enforceable."

128.

The court erred in directing a verdict in favor of plaintiffs on the counter-claim.

129.

The court erred in refusing request numbered 1, made by the defendant, which is in words and figures as follows:

"The court instructs the jury to find the issues for the defendant".

68 130.

The court erred in refusing request numbered 2, made by the defendant, which is in words and figures as follows:

"Under the Act of Congress, known as the Cotton Fuures Act, and under the Treasury Regulations made thereunder, the evidence in this cause is insufficient to show that the dealing in cotton for future delivery referred to in the evidence in this cause and the contracts made for the purchase and sale of said cotton complied with the Cotton Futures Act.

131.

The court erred in refusing request numbered 3, made by the defendant, which is in words and figures as follows:

"Under the Cotton Futures Act of Congress, no legal contract for the future delivery of cotton can be made except by putting said contract in writing. The contracts offered in testimony state on their face that they are made in compliance with the Cotton Futures Act of Congress and the regulations of the New Orleans Cotton Exchange. The rules of the New Orleans Cotton Exchange permit oral contracts. The Act of Congress does not permit oral contracts of that kind. Hence under the Act of Congress the contracts offered in evidence are invalid and cannot be the basis of a recovery in this action."

132.

The court erred in refusing request numbered 4, made by the defendant, which is in words and figures as follows:

"It was the intention of Congress in passing the Cotton Futures Act of Congress to strike down and make illegal and void every contract for the future delivery of cotton, unless said contract was made in accordance with the terms of said Cotton Futures Act. Therefore, if the Internal Revenue of two cents per pound as provided by the Act of Congress, was not paid by the parties to the contract offered in testimony, and if the parties did not enter into the contract as provided by said Act of Congress, then the entire transaction is illegal and void, and there can be no recovery in favor of the plain-

tiff. The Cotton Futures Act of Congress as to the tax provided as follows.

'That upon each contract of sale of any cotton for future delivery made at on or in any exchange board of trade or similar institution or place of business, there is hereby levied a tax in the nature of an excise of two cents for each pound of cotton involved in any such contract.' "

133.

The court erred in refusing request numbered 5, made by the defendant, which is in words and figures as follows:

"Section 4 of said Cotton Futures Act is as follows:

'(Contracts of Sale Form and Contents). That each contract of sale of cotton for future delivery mentioned in Section three of this act shall be in writing plainly stating or 69 evidenced by written memorandum showing the terms of such contract, including the [wuantity] of the cotton involved and the names and addresses of the seller and buyer in such contract, and shall be signed by the party to be charged, or by his agent in his behalf. If the contract or memorandum specify in bales the quantity of the cotton involved, without giving the weight, each bale shall, for the purpose of this act, be deemed to weigh five hundred pounds.' "

134.

The court erred in refusing request numbered 6, made by the defendant, which is in words and figures as follows:

"Under Section 5 of said Cotton Futures Act, it is provided that no tax shall be levied under the act on any contract of sale mentioned in Section 3, quoted above, if the contracts comply with each of the conditions named in section 5. One of these conditions is that said contract must conform to the requirements of Section 4 and the Rules and Regulations made pursuant to that Act. After the passage of said Act, certain regulations were made by the Treasury Department of the United States. Acting under the authority of said Act of Congress, the Treasury Department of the United States adopted the following regulation:

'No provision, by-law, rule or custom of any exchange, board [or] trade, or similar institution or place of business which is inconsistent or in conflict with any requirement or provision of the Act to provide revenue to defray war expenses and for other purposes, approved October 3, 1917, or any regulations

thereunder, nor any collateral, or additional agreement or understanding, either verbal or written, respecting the subject matter of such contract or the settlement or fulfillment thereof, which is inconsistent or in conflict with any requirement of said act or the regulations thereunder promulgated by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall exempt any person from the payment of the tax provided for under section 807, Subdivision 5, of said act.'

"The jury are therefore instructed that if there is any provision by law, rule or custom of the New Orleans Cotton Exchange which is inconsistent with or in conflict with any requirement or provision of the act of the Cotton Futures Act or if there is any additional agreement, understanding, either verbal, or written respecting the subject matter of said contract or the settlement or fulfillment thereof, which is in conflict with any requirement of said act, then and in that event the contracts offered in evidence would be illegal and void and there can be no recovery. In that regard, if the provisions of the New Orleans Cotton Exchange regulations and rules provide for verbal contracts or if they provide for settlements so as to prohibit the actual delivery of the cotton to the defendant if actual delivery was intended then said regulations would be in conflict with the act of Congress, and the rules of the Treasury Department and in that event said contracts would be invalid and no recovery could be had upon them."

135.

70 The court erred in refusing request numbered 7, made by the defendant, which is in words and figures as follows:

"If, under the rules and regulations of the New Orleans Cotton Exchange he plaintiffs or the buyer or seller of cotton to or from the defendant had the right to prevent the defendant from actually receiving the cotton contracted for, or if under said regulations there was any impairment of the defendant's right to receive said cotton, then the contracts offered in testimony did not comply with the Cotton Futures Act and the Treasury Regulations thereunder, and if that be the fact then the plaintiffs cannot recover."

136.

The court erred in refusing request numbered 8, made by the defendant, which is in words and figures as follows:

"If the defendant on the morning of February 1, 1917, sent to the plaintiffs a telegram, authorizing them to stop his losses on 1000 bales at 17.20 cents per pound and on 1000 bales at 17.15 cents per pound, and if there was a custom upon the New Orleans Cotton Exchange, authorizing the plaintiffs upon receipt of that telegram to sell defendant's cotton at 14 cents per pound, and if that custom was unknown to the defendant, then such telegram would not authorize the plaintiffs to sell out defendant's contracts for the future delivery of cotton, if they were valid and at the price of 14 cents per pound. If such are the facts, the sale made by the plaintiffs of 2000 bales of cotton at 14 cents was unauthorized by the defendant and in that event the plaintiff cannot recover.

137.

The court erred in refusing request numbered 9, made by the defendant, which is in words and figures as follows:

"If the contract was in the form required by the Cotton Futures Act, and if the contracts introduced in evidence were fair and presumptively lawful on their face, yet if there was no intention to deliver the cotton bought and sold or to receive the cotton bought and sold then the contract was illegal and there can be no recovery. A contract for the future delivery of cotton, although fair on its face is void, if the parties to the contract did not intend that there should be actual delivery. In other words, if the parties intended at the time of the making of the contract that said contract should be discharged by the payment of one party to the other of the difference between the contract price of the goods at the date fixed for their delivery or the termination of that contract or the market price of that contract, then said contract is what is known as a wager contract and in that event plaintiffs cannot recover. If the parties intended at the time of the asking of these contracts that there should be no actual delivery of cotton and that settlements should be made upon the difference between the contract price and the market price at the time that the contract should be closed, then said contracts are wagering contracts, and are against public policy and void, and no recovery can be had on any such contracts. If the parties intended to speculate without intending any delivery on the rise and fall in the price of cotton, then said contracts were void, and in that event there could be no recovery."

138.

71 The court erred in refusing request numbered 10, made by the defendant, which is in words and figures as follows:

"If either party to the contract, that is if the defendant or the plaintiffs, or if the defendant's vendee or vendor, did not intend under these contracts to deliver any cotton or to receive any cotton and if it was intended only to settle as above stated upon the rise and fall in price of cotton then the contracts were wagering contracts, and there can be no recovery in that event."

139.

The court erred in refusing request numbered 11, made by the defendant, which is in words and figures as follows:

"If the jury find that the contracts are wagering contracts and void as above set forth, then the defendant in that event would be entitled to recover against the plaintiffs in this action the amount of actual money paid by the defendant to the plaintiffs and if the jury find that said contracts are wagering contracts, and if the defendant in furtherance of said contracts paid money over to the plaintiffs then the defendant would be entitled to a verdict in his favor for the amount of money so paid by him and in the hands of the plaintiff at the time of the termination of the transaction."

140.

The court erred in refusing request numbered 12, made by the defendant, which is in words and figures as follows:

"In determining the question as to whether the contracts introduced in evidence are illegal and void as being wagering contracts the jury are entitled to take into consideration all the facts and circumstances in the case, including the usages and customs of cotton brokers on exchanges and including the amount of cotton sold on the exchanges and the amount bought thereon and also the business of the defendant and his ability and capacity to take and pay for the amount of cotton purchased. The question on that subject to be determined by the jury is as to whether it was intended by the plaintiffs and the defendant that there should be an actual delivery and receipt of the cotton. If no actual delivery was intended, then the plaintiffs cannot recover. This, if true, defeats the plaintiff's recovery, although the contracts for the purchase and sale of the cotton may be in writing and may be in the usual

form and in accordance with law. If it be true that the parties did not intend the actual delivery of the cotton, they cannot make their transactions valid by placing the same in the form of contracts which are fairly legal on their face. The jury have the right to consider all evidence introduced, including that outside of and beyond the contracts. They are not bound to find that an actual delivery was intended even if the contract so recites. If the evidence shows that no actual delivery was intended then the contracts are void, although delivery may be provided for in the contracts and if they are void, then there can be no recovery."

72

141.

The court erred in refusing request numbered 13, made by the defendant, which is in words and figures as follows:

"If the plaintiffs were brokers upon the New Orleans Cotton Exchange, and if they purchased for the account of the defendant from other brokers on said Cotton Exchange 2000 bales of cotton prior to February 1, 1917, and if on February 1, 1917, the plaintiff as brokers sold to other brokers for the account of the defendant 2000 bales of cotton, and if these trades were in the form required by the rules of the New Orleans Cotton Exchange and the United States Cotton Futures Act, and if the parties to these transactions under the guise of such a contract did not intend to deliver or receive cotton under said contracts and if the real intent was merely to speculate in the rise or fall of prices and the cotton was not intended to be delivered but one party was to pay to the other the difference between the contract price and the market price of the cotton at the date fixed for executing the contract or at such other date as the parties interested might elect, then the whole contract constituted nothing more than a wager and is null and void and in that event the plaintiff cannot recover."

142.

The court erred in refusing request numbered 14, made by the defendant, which is in words and figures as follows:

"If the parties, the plaintiffs and the defendant, or the latter's vendors or vendees, at the time of entering into the transactions, did not intend to deliver any cotton on the contract, and if it was their intention not to deliver any cotton but to take profits or losses by the rise or fall in the price of cotton, then said contracts are void and if such are the facts, then even if the defendant agreed to pay the balance, such

an agreement in that event would not be binding, and under those facts, the plaintiffs cannot recover on any agreement by defendant to pay, if he made such agreement."

143.

The court erred in refusing request numbered 15, made by the defendant, which is in words and figures as follows:

"Some reference has been made in the evidence to the question of hedging, it being contended that hedging was legal. On that question the court instructs the jury that if a holder of spot cotton in order to recoup his loss by a fall in the price of that cotton, sells futures without any intention on his part to deliver the cotton on the futures contract, and if the futures contract is made without any intention to accept or deliver cotton thereon, but to take or make profit by the fall of the price in futures, then under those circumstances the said futures contract would be unlawful and void; and there could be no recovery in a case of that kind where the right of recovery is based upon the fall in the price of the futures."

73 Wherefore, the defendant, Fred Browne, being the plaintiff in the Court of Appeals, prays that the judgment of the said United States District Court for the Western District of Arkansas, rendered as above set forth, be reversed, and that said cause be remanded to said court for such proceedings as shall be proper to be taken therein, under the direction of this court.

FRED BROWNE
By James B. McDonough,
His Attorney.

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74 (Supersedeas Bond on Writ of Error.)

Filed in U. S. District Court March 1, 1920.

Know All Men By These Presents, That we, Fred Browne, as Principal, and F. A. Handlin and A. N. Steard and M. T. Tancred as Sureties are held and firmly bound unto the plaintiffs herein to-wit: Charles B. Thorn, William T. Maginnis, Samuel C. Coleman, and Miles J. Kohoe, doing business and maintaining this suit under the firm name of Thorn & Maginnis, in the full and just sum of Twenty-three Thousand two hundred fifteen Dollars ($23,215.00), and full and complete interest thereon as found in the verdict returned in favor of the plaintiffs and against the defendant in this cause. The said principal sum and interest as found by the jury and ad-

judged by the court to be paid to the said plaintiffs, Thorn & Maginnis, and to their heirs, executors, administrators or assigns: to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 28th day of February in the year of our Lord One Thousand Nine Hundred and Twenty. This obligation is upon the conditions herein stated.

75 Whereas lately at a term of the District Court of the United States for the Western District of Arkansas, Fort Smith Division in a suit [depending] therein between Thorn & Maginnis plaintiffs as above shown, and Fred Browne defendant, a judgment was rendered against the said Fred Browne for the sum of $23,215.00 principal sum and interest thereon from the first day of February, 1917 at 6% per annum, making a total sum for which said judgment was rendered of $27,393.70 and costs. And the said Fred Browne, defendant in said cause having obtained a writ of error from the United States Circuit Court of Appeals of the Eighth Circuit of the United States, to reverse the judgment in the aforesaid suit, said appeal having been granted as allowed and required by law.

Now, therefore, the condition of the above obligation is such that if the said Fred Browne shall prosecute his writ of error to effect, and will pay the amount of the said judgment and interest and answer all damages and costs, if he fails to make his plea good, then the above obligation to be void; else to remain in full force and effect.

FRED BROWNE Seal
Principal.
F. A. HANDLIN Seal
A. N. SICARD Seal
M. T. TANCRED Seal

Sealed and delivered in the presence of

A. S. Bullock

Approved this 28th day of February, 1920.

By Frank A. Youmans
Judge.

76 Bill of Exceptions.

Filed in U. S. District Court February 28, 1920.

Be It Remembered that heretofore to-wit, on the 26th day of January, 1920, the parties hereto, to maintain the issues on their respective parts, introduced the testimony set out below. The said testimony is all of the evidence in this cause. The said testimony was taken down in short hand by James K. Perkins, and thereafter transcribed into long hand. Said testimony and the court's charge, is in words and figures as follows:

77 Now on this the 26th day of January, A. D. 1920, the above entitled cause came on for trial before the Honorable Frank A. Youmans, Judge, came the plaintiffs in person and by their attorneys, Oglesby, Cravens & Oglesby and Clyde C. Going, and came the defendant in person and by his attorney James B. McDonough, and both parties announcing ready for trial, the following proceedings were had.

The defendant objected to the introduction of any testimony in the case on the ground that no cause of action is stated, both on the ground that no compliance with the Cotton Futures Act is shown, and that no allegation is made in the complaint that it was intended to complete the contracts sued upon, which objection was by the court overruled, and the defendant duly saved his exception.

Plaintiffs' Evidence.

The deposition of MILES J. KEHOE was offered in evidence by the plaintiffs, to which the defendant objected on the ground that the testimony shows no compliance with the United States Cotton Futures Act.

The Court: Have you the record of this case before? At this point I would like to ask what defense you rely
78 upon, Mr. McDonough?

Mr. McDonough: I rely upon three defenses, Your Honor, as I construe the answer. First, that these contracts as offered do not comply with the United States Cotton Futures Act, and then, second, which will make another defense that they do not comply with the United States Treasury regulations on the subject. Third, that the transactions are void because they were dealing in the rise and fall of prices and not intending to deliver the cotton, and Fourth, that the telegram of February 1st did not authorize plaintiffs to sell the cotton at 14 cents.

Mr. Cravens: May it please the Court, I would like for him to specify in what respect and to what section of the Cotton Futures Acts that is objectionable.

The Court: I did not intend to go into that so minutely. I wanted enough that I could follow the testimony. Do you regard your defense that the contract was in violation of the Cotton Futures Act as a question of law or a question of fact?

Mr. McDonough: I have been somewhat troubled about that. At first I thought it was a question of law, that the Court of Appeals had decided against me, but upon examination I am inclined to think it is a question of fact now.

The Court: You think it has not been settled by the Court of Appeals?

Mr. McDonough: The law has been settled, but suppose the proof should be different to what it was then?

The Court: The next one that it is a violation of the rules of the United States Treasury regulations; now is that a question of law or fact?

Mr. McDonough: It is a question of both.

Mr. Cravens: That is not raised under the pleadings?
79 One of these regulations is that any regulation of a cotton exchange which is not in compliance with the Cotton Futures act renders the contracts void.

The Court: That would still be under the United States Cotton Futures Act, would it not?

Mr. McDonough: Probably so; I think so.

The Court: I think I understand. Now of course, the particular question that was settled by the Court of Appeals and it was my recollection of it that all the testimony that went in before was admissible under that, and that which was offered and excluded is now by that decision made admissible.

Mr. Cravens: That is my understanding.

The Court: If you have a different idea, then I wish at the proper time that you would present that question.

Mr. McDonough: I will Your Honor. I will present it as we get to it.

Mr. Cravens: He says one ground is that it is not in compliance with the regulations of the Treasury Department. The only thing I recollect in the pleading was of the Cotton Fu-

tures act [was] that it was not in compliance with the Cotton Futures act.

Mr. McDonough: And the regulations of the Treasury Department.

Mr. Cravens: I don't think that ought to be allowed at this time.

The Court: The last objection made is overruled, and exception noted.

By Mr. Cravens: (Reading)

Q. Mr. Kehoe, what is your age?

A. Forty and a half; I will be forty-one in June.

Q. Are you a citizen and resident of Louisiana?

A. Yes, sir.

80 Q. Are you one of the plaintiffs in this action?

A. Yes, sir.

Q. State whether or not Charles B. Thorn, William T. Maginnis and Samuel C. Coleman, are citizens and residents of the State of Louisiana? A. They are; all of them.

Q. Do you know that of your own knowledge? A. I do.

Q. Who compose the firm of Thorn & Maginnis, the plaintiffs in this suit?

A. Charles B. Thorn, William T. Maginnis, Samuel C. Coleman and myself, Miles J. Kehoe.

Q. Is that a co-partnership, or a corporation?

A. A co-partnership.

Q. Do you know the defendant, Fred Browne? A. I do.

Q. Where does Mr. Browne reside, if you know?

A. Fort Smith, Arkansas.

Q. At what time did you first meet the defendant, Mr. Browne? A. On February 8th, 1917.

Q. Was that subsequent to the making of the transactions here in controversy? A. Yes, sir.

Q. You had never met him then, prior to the making of these transactions? A. No, I had not.

Q. When did your firm enter into business relations with the defendant, Mr. Browne? A. On September 22, 1916.

Q. Take the paper which I now hand you, which purports to be a telegram from the defendant, Browne, dated January 25, 1917, and read it.

Mr. McDonough: I object to the reading of the telegram.

The Court: The objection will be overruled.

Mr. McDonough: Exception.

(Reading) "Fort Smith, Arkansas, 1:32 P. M. January 25, 1917. Thorn and Maginnis, New Orleans, La. Buy four May Deposited two thousand your credit City National. Fred Browne".

Mr. Cravens: In connection with that answer I offer the telegram itself. (Reading) Fort Smith, Ark. 1:30 PM January 25th, 1917. Thorn and Maginnis, New Orleans, Louisiana. Buy four. May. Deposited two thousand your credit City National. Fred Browne. 1.36 P. M.

Mr. McDonough: I object to it, Your Honor, because it does not show what month.

Mr. Cravens: I think there is some explanation later on.

The Court: Does the witness state when he received it?

Mr. Cravens: Yes, sir; January 25, 1917.

81 The Court: He does state when he received that telegram and identifies that telegram, does he?

Mr. Cravens: Yes, sir.

The Court: Objection is overruled.

Mr. McDonough: Save an exception.

Q. How was that telegram received?
A. At the Cotton Exchange, by Mr. Coleman.

Mr. Andrews: May I ask a question as to the competency?

Mr. Johnson: Yes.

By Mr. Andrews:
Q. Did you see Mr. Coleman when he received it?
A. I was standing along side of him during every trade made for Mr. Browne, because I confirmed the trade; I advised the execution.
Q. And you saw him receive that particular telegram?
A. I did.
Q. Who was it received by? What telegraph Company?
A. A Western Union message and delivered at the ring side—telegram.

Mr. Johnson: I offer and introduce the telegram in evidence and ask that it be marked Plaintiff's Exhibit 1.

Mr. Andrews: Defendant objects to the introduction of the telegram, and asks that the testimony of the witness with reference to the contents of the telegram be stricken.

The Court: The objection is overruled.

Q. Upon the receipt of this telegram, what did you do?
A. Well, I saw Mr. Coleman buy the four hundred bales of May cotton. He marked the price on the telegram at 84; it was 16.84 cents. He handed it to me and I advised Mr. Browne by wire.

Mr. Andrews: To the answer of the witness, defendant objects and asks that the evidence be stricken.

The Court: Overruled.

Mr. McDonough: Exception.

Q. Take the paper that I now hand you and state what that is and read the paper?
A. This is a telegram that I sent Mr. Fred Browne, on January 25, 1917, reading: "Fred Browne, Fort Smith, Arkansas. Bought four May 84 (Signed) T. & M."
Q. What do the letters "T. & M." mean?
A. Thorn & Maginnis. He understood it was Thorn & Maginnis.
Q. Did you write that telegram yourself? A. I did.
Q. Did you deliver the original to the Telegraph Company? A. I did.

Mr. Johnson: I introduce the paper in evidence, and ask that it be marked Plaintiff's Exhibit 2.

Mr. McDonough: I object to the introduction of that telegram on the ground that it does not show a compliance with the Cotton Futures act.

82 The Court: Objection overruled.

Mr. McDonough: Exception.

Q. Take the paper that I now hand you and read it, and state what it is?
A. A telegram from the Western Union dated Fort Smith, Arkansas, 11:16 A. M., January 25, 1917, to Thorn & Maginnis, New Orleans, Louisiana: "Buy two May", signed "Fred Browne".

Mr. McDonough: Objected to on the ground that it does not show a compliance with the Cotton Futures Act.

The Court: Objection overruled.

Mr. McDonough: Exception.

Mr. Cravens: I offer the original telegram in connection with that, which is a copy of this that I have read you:

Said Telegram being in words and figures as follows:

"Ex Ft. Smith, Ark., 11:16 AM. January 25, 1917.

Thorn & Maginnis, New Orleans, La.
Buy two may" (Signed) "Fred Browne, 11:20 AM."

Q. In pursuance of the receipt of that telegram, what did you do?

A. Well, I saw Mr. Coleman execute the order and mark the price on the face of the telegram at 83, and I advised the execution by the Western Union telegram to Mr. Browne. It was 16.83.

Mr. Johnson: I offer, introduce in evidence the said telegram, and ask that it be marked plaintiff's Exhibit 3.

Q. Take the paper that I now hand you and state what it is and read it?

A. It is a copy of a telegram that I sent Fred Brown dated January 25, 1917, at Fort Smith, Arkansas: "Bought two May 83" signed "T & M" (Thorn & Maginnis).

Mr. McDonough: Same objection to that, that it does not show a compliance with the Cotton Futures act.

The Court: Overruled.

Mr. McDonough: Exception.

Mr. Cravens: I offer the telegram "Bought two May at 83" signed "T & M."

Q. Is this in your own handwriting? A. It is.
Q. How was that telegram made?
A. That is a carbon copy.
Q. Is that a carbon of the original?
A. The original was handed in to the Western Union.
Q. You delivered the original to the Western Union?
A. Yes, sir.
Q. And this is a carbon copy of the original? A. It is.
Q. Made from the original?
A. From the original, yes; it is an exact copy.

Mr. Johnson: I offer and introduce the said document
83 in evidence, marked Plaintiff's Exhibit 4.

Said paper being in words and figures as follows:

"Plaintiff's Exhibit 4.

Jany. 25, 1917.

Fred Browne, Ft. Smith, Ark.
Bought two May 83.

T & M."

Q. Take the paper I now hand you, and state what it is?
A. Telegram from the Western Union dated Fort Smith, Arkansas, 10:21 A M, January 27th, 1917, to Thorn & Maginnis, New Orleans, Louisiana, "Buy two May New Orleans" (signed) "Fred Browne".

Mr. McDonough: I object to the introduction of that on the ground that it does not show a compliance with the Cotton Futures act.

The Court: Overruled.

Mr. McDonough: Exception.

Q. Upon receipt of that telegram what did you do?
A. Well, I saw Mr. Coleman execute the order and he marked the price "06" on the telegram; he handed it to me and I advised the execution over the Western Union Telegraph Company.
Q. What do you mean by advising the execution of the order?
A. Well, I mean that I went down and sent a telegram to Mr. Browne advising him that we had bought two hundred May at 17.06.

Mr. Johnson: I offer the said paper in evidence, and ask that it be marked Plaintiff's exhibit 5.

Said paper being in words and figures as follows:

"Plaintiff's exhibit 5.

Ft. Smith, Ark., 10:21 AM Jan 27, 1917.

Thorn and Maginnis, NO LA
Buy two May New Orleans. Fred Browne, 10:25½ AM"
06

Mr. McDonough: I make the same objection.

The Court: Overruled.

Mr. McDonough: Exception.

Q. Take the paper I now hand you and read it, and state what it is?

A. It is a copy of a Western Union Telegram sent Fred Browne on January 27th, 1917, at Fort Smith, Arkansas, "Bought two May 06" meaning at 17.06, signed "T & M" (Thorn & Maginnis.

Q. Did you write and file with the Telegraph Company the original of this?

A. Yes, sir, I did; this is an exact carbon copy.

Mr. Johnson: I offer and introduce the paper in evidence and ask that it be marked Plaintiff's exhibit 6.

84 The defendant objected to the introduction of Plaintiff's Exhibit 6, on the same ground as made to other telegrams theretofore introduced, which objection was by the court overruled, and the defendant excepted.

Said telegram being in words and figures as follows:

"Plaintiff's Ex. 6.

Jan. 27, 1917.

Fred Browne, Ft. Smith, Ark.
Bought two May 06". (signed) "T & M".

Q. Take the paper I now hand you, read it and state what it is?

A. Western Union telegram dated Fort Smith, Arkansas, 9:24 A M, January 29, 1917, to Thorn and Maginnis, New Orleans, Louisiana, "Buy four May" signed "Fred Browne".

Q. How was that telegram received?

A. Received by Mr. Coleman at the ring side.

Q. By what telegraph Company?

A. The Western Union.

Q. Upon receiving the telegram what did you do?

A. Well, Mr. Coleman received the telegram and executed the order. I saw him buy four May at 17.08.

Q. You saw him [but] it? A. I saw him.

Mr. Johnson: I offer and introduce the paper in evidence and ask that it be marked Plaintiff's exhibit 7.

The defendant objected to the introduction of Plaintiff's exhibit 7, on the same ground as made to other telegrams theretofore introduced, which objection was by the court overruled, and the defendant excepted.

Said telegram being in words and figures as follows:

"Plaintiff's Ex. 7

Ft. Smith, Ark., 9.24 AM
Jan 29, 1917.

Thorn & Mag
New Orleans, La.
Buy four may" (signed) "Fred Browne, 9;28 AM."

Q. Take the paper I now hand you and read it and state what it is?

A. Copy of telegram sent Mr. Brown on January 29th, by Western Union, at Fort Smith, Arkansas, "Bought four May 08. Please deposit two thousand additional and have bank confirm promptly." Signed "T & M".

Q. State whether or not you sent that telegram?

A. I sent that telegram; that is an exact copy—carbon copy—of telegram I sent him; the original was filed with the Western Union.

Mr. Johnson: I offer and introduce in evidence the paper and ask that it be marked Plaintiff's Exhibit 8.

The defendant objected to the introduction of plain-
85 tiff's exhibit 8, on the same ground as made to other telegrams theretofore introduced, which objection was by the court overruled, and the defendant excepted.

Said telegram being in words and figures as follows:

"Plaintiff's Ex. 8

Jan. 29, 1917.

Fred Browne,
Ft. Smith, Ark.
Bought four May 08. Please deposit two thousand addi tional and have bank confirm promptly.

T. & M."

Q. Take the paper I now hand you and read it and state what it is?

A. Western Union telegram dated Fort Smith, Arkansas, 12:49 P M, January 29th, 1917, to Thorn and Maginnis, New Orleans, Louisiana, "Buy three May" signed "Fred Browne".

Q. Upon receiving that telegram what was done by Thorn & Maginnis?

A. Well, I saw Mr. Coleman receive the telegram and buy three May at 88—16.88—and he wrote the figures on the telegram; he always marks the price at which he buys cotton.

Mr. Johnson: I offer and introduce the document in evidence, and ask that it be marked Plaintiff's exhibit 9.

The defendant objected to the introduction of plaintiff's exhibit 9, on the same ground as made to other telegrams theretofore introduced, which objection was by the court overruled, and the defendant excepted.

Said telegram being in words and figures as follows:

"Plaintiff's Ex. 9.

Ft. Smith, Ark., 12:49 P Jan 29, 1917.

Thorn and Maginnis,
New Orleans, La.
Buy three May". (Signed) "Fred Browne, 1251 P.
88

Q. Take the paper I now hand you, read it and state what it is?

A. Copy of Western Union telegram sent Fred Brown, Fort Smith, Arkansas, on January 29th, 1917: "Bought three May eighty-eight. (signed) T & M".

Q. In whose handwriting is the telegram? A. My own.

Q. State whether or not you delivered the original to the Western Union?

A. I did. I delivered the original to the Western Union, and this is an exact duplicate.

Q. How was that—that duplicate?

A. A carbon copy.

Mr. Johnson: I offer and introduce the paper in evidence, and ask that it be marked Plaintiff's Exhibit 10.

The defendant objected to the introduction of plain-
86 tiff's Exhibit 10, on the same ground as made to other telegrams theretofore introduced, which objection was by the court overruled, and the defendant excepted.

Said telegram being in words and figures as follows:

"Plaintiff's Ex. 10

Jan. 29, 1917.

Fred Browne,
Ft. Smith, Ark.
Bought three May eighty-eight. (signed) T. & M."

Q. Take the paper I now hand you, read it and state what it is?

A. Western Union telegram dated Fort Smith, Arkansas, 9:50 A M January 30th, 1917, to Thorn & Maginnis, New Or-

leans, Louisiana: "Buy two May NO (New Orleans" signed "Fred Browne".

Q. What was done by the firm of Thorn & Maginnis upon receiving that telegram?

A. Well, Mr. Coleman received the telegram and I saw him buy two May at 16.93, as per pencil mark on the reverse of the telegram.

Mr. Johnson: I offer and introduce the paper in evidence, and ask that it be marked Plaintiff's exhibit 11.

The defendant objected to the introduction of plaintiff's Exhibit 11, on the same ground as made to other telegrams theretofore introduced, which objection was by the court overruled, and the defendant excepted.

Said telegram being in words and figures as follows:

"Plaintiff's exhibit 11

Ft. Smith, Ark., 9:50 AM Jan 30, 1917.

Thorn & Mag,
New Orleans, La.
Buy two May NO (signed) Fred Browne, 9:53 AM."

Q. Take the paper I now hand you, read it and state what it is?

A. Copy of Western Union telegram sent Fred Browne at Fort Smith, Arkansas, on January 30th, 1917, "Bought two May 93", signed "T & M". I wrote it.

Q. Did you file the original?

A. I filed the original and this is an exact duplicate.

Q. You filed the original with the Western Union Telegraph Company?

A. Filed the original with the Western Union Telegraph Company.

Mr. Johnson: I offer and introduce the paper in evidence, and ask that it be marked plaintiff's exhibit 12.

The defendant objected to the introduction of plaintiff's exhibit 12, on the same ground as heretofore, which objection was by the court overruled, and the defendant excepted.

87 Said telegram being in words and figures as follows:

"Plaintiff's Ex. 12

Jan. 30, 1917.

Fred Browne,
Ft. Smith, Ark.
Bot two May 93. (signed) T. & M."

Q. Take the paper I now hand you, read it and state what it is?

A. Western Union telegram dated Fort Smith, Arkansas, 10:35 AM, January 31, 1917, to Thorn & Maginnis, New Orleans, Louisiana, "Buy three May New Orleans stop ten loss (signed) Fred Browne."

Q. What was done by your firm upon receiving that telegram?

A. Mr. Coleman received the telegram and bought three May at 17.13.

Q. Well, did you see him do it? A. I did.

Mr. Johnson: I offer the paper in evidence, and ask that it be marked Plaintiff's Exhibit 13.

The defendant objected to the introduction of plaintiff's exhibit 13, on the same ground as made to other telegrams theretofore introduced, which objection was by the court overruled, and the defendant excepted.

Said paper being in words and figures as follows:

"Plaintiff's Ex. 13

Ft. Smith, Ark., 10:35 AM, Jan. 31, 1917.

Thorn and Maginnis,
New Orleans, La.
Buy three May New Orleans stop ten loss.
(signed) Fred Browne, 10:45 AM."

Q. Take the paper that I now hand you and read it and state what it is?

A. A copy of Western Union telegram sent Fred Browne at Fort Smith, Arkansas, on January 31st, 1917, reading "Bought three May thirteen" signed "T & M". I wrote the telegram and this is a carbon copy.

Q. What does "T & M" mean? A. Thorn & Maginnis.

Mr. Johnson: I offer and introduce the paper in evidence, and ask that it be marked Plaintiff's Exhibit 14.

The defendant objected to the introduction of plaintiff's exhibit 14, on the same ground as made to other telegrams

theretofore introduced, which objection was by the court overruled, and the defendant excepted.

Said telegram being in words and figures as follows:

"Plaintiff's Ex. 14

Jan. 31, 1917.

Fred Browne,
Ft. Smith, Ark.
Bought three May thirteen. (signed) T. & M."

88 Q. Take the paper I now hand you, read it and state what it is?

A. Western Union Telegram dated Fort Smith, Arkansas, 8:30 AM. February 1st, 1917, addressed to Thorn & Maginnis, New Orleans, Louisiana, reading: "Stop ten seventeen twenty and ten seventeen fifteen (signed) Fred Browne".

Q. What did your firm do upon receiving that telegram?

A. Well, Mr. Coleman received that telegram before the opening of the market, and he executed the order upon the opening.

Q. Did you see him execute it?

A. Well, this particular trade, I did not. He had some March cotton to sell on the opening, and he gave me the executions to advise, and I was down at the Western Union. You see on the opening call, they start on March, and then April, May and June, on down the line. He executed the March orders and handed me the March telegrams, and I went down to advise them, and in the meantime, the May cotton was traded in, and he executed the order, and when I came back he handed me the telegram advising the sale of two thousand May at 14 cents.

Q. Did you send the telegram?

A. I sent the telegram.

Q. Advising Mr. Browne?

A. I did.

Q. Of the sale at 14 cents?

A. Yes, sir.

Mr. Johnson: I offer and introduce the paper in evidence, and ask that it be marked Plaintiff's Exhibit 15.

Mr. McDonough: I move to exclude that because it is not shown that he was present upon the execution of the order, that portion of the statement which says that Mr. Coleman executed it and that he wasn't present.

The Court: The objection is not made with regard to the receipt of that telegram, that is, this particular part of it, but with regard to the execution of the order.

Mr. Cravens: If the Court please, I think it admissible by finding what the gentleman says was done in just a few moments. He says that Coleman handed him a telegram which notified Browne that they had sold the 2000 bales and then Mr. Coleman subsequently comes in and says that he executed the order, so it is connected up in that way.

The Court: Objection is overruled.

Mr. McDonough: Save an exception.

Said telegram is in words and figures as follows:

"Plaintiff's Exhibit 15

Ft. Smith, Ark., 830 AM Feb. 1, 1917.

Thorn & Mag, New Orleans, La. Stop ten seventeen twenty and ten seventeen fifteen. FRED BROWNE, 838AM."

89 Q. Take the paper I now hand you, read it and state what it is?

A. It is a copy of a Western Union telegram to Fred Browne, Fort Smith, Arkansas, dated February 1st, 1917, reading: "Sold twenty May Fourteen cents", signed "T & M".

Q. Who sent that telegram?

A. I did. It is an exact carbon copy of the telegram filed with the Western Union.

Q. Where? A. Western Union in the Cotton Exchange.

Q. In New Orleans? A. Yes.

Mr. Johnson: I offer, and introduce the paper in evidence, and ask that it be marked Plaintiff's exhibit 16.

The defendant objected to the introduction of plaintiff's exhibit 16, on the same ground as made to other telegrams theretofore introduced, which objection being overruled by the court, the defendant excepted.

Said paper being in words and figures as follows:

"Plaintiff's Ex. 16 Feb. 1, 1917.

Fred Browne,
Ft. Smith, Ark.

Sold twenty May fourteen cents. (signed) T. & M."

Q. Are your firm members of the New Orleans Cotton Exchange?

A. They are.

Q. Where were those various purchases and sales of cotton executed?

A. Across the ring in the Cotton Exchange.
Q. In what City? A. New Orleans.
Q. State whether or not they were made in conformity with the rules and regulations of the New Orleans Cotton Exchange?
A. They were made and confirmation slips sent out every evening reading—
Q. What did you understand the telegram, Plaintiff's Exhibit 1, reading in part "Buy four May" to mean?

Mr. McDonough: I object on two grounds, first that there is no compliance with the Cotton Futures act shown, and second, there is no explanation of the meaning of the telegram.

The Court: Objection is overruled.

Mr. McDonough: Exception.

Mr. McDonough: Now, that telegram offered, Exhibit 16, that is objected to on the ground that it does not comply with the Cotton Futures act, second, on the ground that it is not explained, and third, on the ground that it is not in compliance with the previous order.

90 The Court: Objection overruled.

Mr. McDonough: Save our exception.

A. Buy four hundred bales of May cotton on the New Orleans Exchange.
Q. What do I understand you to mean by four hundred bales of May Cotton?

Mr. McDonough: That is objected to Your Honor, because he is going beyond and explaining the meaning of a technical telegram.

The Court: The objection is overruled.

Mr. McDonough: Save an exception.

A. Well, that he wanted to purchase cotton for May delivery.
Q. Four hundred bales?
A. Four hundred bales for May delivery in New Orleans.
Q. From whom did your firm purchase that four hundred bales of cotton?

Mr. McDonough: I object to that, Your Honor, on the ground that these transactions under the Cotton Futures act must be in writing and the writing is the best evidence, it not being offered up to this time.

The Court: I have forgotten how that was ruled on at the last trial.

Mr. Cravens: My recollection is Your Honor, that before he gets through, he goes on and describes it. He is not asking him who made the contract; he is just asking him who he bought from.

Mr. McDonough: He says "From whom did your firm purchase that 400 bales of cotton". Now how can that be shown except by a written contract? My objection is on that ground.

Mr. Cravens: My recollection is that he goes on in his deposition and offers these contracts in writing and identifies each one of them.

The Court: If that isn't done, Mr. McDonough, you can renew your objection.

91 Mr. McDonough: Save our exception. There is another objection to that, Your Honor. I have to make it now because if I did not I might be waiving it. When you come to the supposed contract with Silvan Newburger & Company, it shows quite a number of bales of cotton and they select out just certain cotton and say that was Browne's cotton; nothing in the writing showing it was Browne's cotton, and hence they are attempting to supply things by verbal testimony that must be in writing. Now I am not sure that that is true as to Silvan Newburger & Co. because I find on page 70 of the printed record that there is only one item on that. If that is the one referred to the only objection to that would be that they should read those contracts, identify them show that they were made properly.

The Court: I understand now Mr. Cravens, and Mr. Going, that this will be followed up by the introduction of the contracts themselves?

Mr. Cravens: If not in connection with his deposition, in some other deposition that was taken at the same time.

The Court: Very well; the objection is overruled.

Mr. McDonough: Save our exception.

A. Three hundred from Silvan Newburger & Company.
Q. At what price?
A. At 16.84 and 100 at 16.84 from C. P. Ellis & Company.

Mr. McDonough: As to C. P. Ellis & Co. shown by page 69 of the original record, here is a transaction between Thorn

& Maginnis and C. P. Ellis & Co. dated January 25, 1917, in which it recites that C. P. Ellis & Co. sold to Thorn & Maginnis 1100 bales of cotton. Now there is nothing in the writing that shows that any part of that cotton belonged to Fred Browne the defendant. I object to any evidence relating to it because that modifies the written contract. He has offered to prove orally by this witness Coleman that Fred Browne
92 owned a part of that cotton, whereas there is no writing to show that he owned a part of it.

The Court: Overruled.

Mr. McDonough: Save our exception.

Q. Who are Silvan Newburger & Co. and C. P. Ellis & Co.?
A. Brokers and members of the New Orleans Cotton Exchange.
Q. How was that purchase made from them?

Mr. McDonough: I renew the objection there the same as heretofore urged.

The Court: Overruled.

Mr. McDonough: Save an exception.

A. Why, at public outcry over the ring, at the best possible price.
Q. What do you mean by "ring?"
A. Well, I mean the brokers stand around and buy and sell their cotton.
Q. On the [floore] of the New Orleans Cotton Exchange?
A. On the floor of the New Orleans Cotton Exchange.
Q. It is called a ring?
A. Yes. Well, it is a ring; we are around the railing, like in the shape of a ring. All the brokers stand around it, and offer to bid for cotton.
Q. Mr. Kehoe, Mr. Coleman is a member of your firm?
A. Yes, sir.
Q. You saw him buy all of this cotton except the sale of the two thousand bales?
A. I saw him buy every bale of that cotton except the two thousand bales. I happened to be advising an execution just at that moment on a March order, which was traded in just previous.
Q. Take plaintiff's exhibit 3 which reads "Buy two May" and explain what that means?
A. It meant to buy two hundred bales of May cotton—for May delivery—on the New Orleans Cotton Exchange.

Mr. McDonough: I do think I should object to that to save my objection.

The Court: Overruled.

Mr. McDonough: Save my exception.

Q. From whom did you buy the two hundred bales?

Mr. McDonough: The same objection as heretofore.

The Court: Overruled.

Mr. McDonough: Exception.

93 A. We bought one hundred at 16.83 from C. P. Ellis & Company and one hundred at 16.83 from Hayward Howard & Company.

Q. Are they members of the New Orleans Cotton Exchange?

A. They are.

Q. That was bought on the floor? A. Yes.

Mr. McDonough: I object to that on the further ground that they bought a large number of bales and there is nothing in the writing to show that Fred Browne was one of them.

The Court: Overruled.

Mr. McDonough: Exception.

Q. —of the New Orleans Cotton Exchange?

A. We only trade with members of the New Orleans Cotton Exchange.

Q. On the floor?

A. On the floor of the Exchange.

Q. Take plaintiff's exhibit 5 which reads: "Buy two May New Orleans", and state whether or not they were purchased and from whom, on January 27th?

Mr. McDonough: The same objection to that as to the preceding one?

The Court: Overruled.

Mr. McDonough: Exception.

A. There was 100 May bought at 17.06 from J. M. Harrison & Company, and 100 bought at 17.06 from Pinckard & Kennedy.

Q. Where were they bought and under what circumstances?

A. They were bought across the ring in the New Orleans Cotton Exchange, at public outcry.

Q. By whom? A. By Mr. Coleman.
Q. You saw them purchased? A. I did.
Q. Take plaintiff's exhibit 7, which reads: "Buy four May", and state whether or not you bought them and from whom you bought them?

Mr. McDonough: The same objection.

The Court: Overruled.

Mr. McDonough: Exception.

A. We bought four May at 17.08 from H. & B. Beer. Mr. Coleman bought the cotton. I saw him buy it.
Q. Take plaintiff's exhibit 9, which reads: "Buy three May" and state whether you bought that and from whom you bought it?

Mr. McDonough: The same objection.

The Court: Overruled.

Mr. McDonough: Save our exception.

94 A. We bought 100 May at 16.88 from H. D. Cothran & Company, at 16.88, and 200 from Pinckard & Kennedy at 16.88. Mr. Coleman bought the cotton and I saw him buy it.
Q. Take plaintiff's exhibit 11, which reads: "Buy two May New Orleans", and explain what that means, to "buy two May New Orleans"?

Mr. McDonough: The same objection to that.

The Court : Overruled.

Mr. McDonough: Except.

A. To buy 200 bales of May cotton—for delivery in May—New Orleans. "NO" means New Orleans.
Q. Did you buy that cotton, and if so, from whom?

To which the defendant objected on the same ground as heretofore, which objection being overruled by the court the defendant excepted.

A. We bought 200 bales from John F. Clark & Company, at 16.93.
Q. Take plaintiff's exhibit 13 which reads, in part, "Buy three May New Orleans", and state whether or not the cotton was purchased, and if so, from whom?

To which the defendant objected on the same ground as heretofore urged, which objection being overruled by the court, the defendant excepted.

A. The cotton was purchased by Mr. Coleman at 17.13, 100 bales from Felix Couturie & Company, and 200 bales from Shepard & Gluck.

Q. Take plaintiff's exhibit 15 which reads "Stop ten seventeen twenty and ten seventeen fifteen", and explain what the plaintiffs understood that telegram to mean?

To which the defendant objected on the same ground as heretofore urged, which objection being overruled by the court, the defendant excepted.

A. That means to stop ten seventeen twenty and ten seventeen fifteen. Mr. Browne had two thousand bales of May cotton long.

Q. What do you mean by long?

A. Well, he had purchased two thousand bales; he had bought two thousand bales of cotton on our books; that is the term we use, "long" and "short".

Q. You explain what you understood the telegram to mean?

A. That he wanted to sell this cotton at a certain price—placed this order to be executed at that price, or the next best possible price. We cannot always execute a stop at the price given.

95 Mr. McDonough: Objected to on the same grounds, it is varying the terms of a written instrument, and not in compliance with the Cotton Futures act.

The Court: Objection overruled and exception noted.

Mr. McDonough: I move to exclude that part of the answer "or the next best price" that being immaterial, incompetent and irrelevant, and inadmissible, there being no showing of any rule or written authority for that, no showing of any authority for that statement.

Mr. Cravens: That is explanatory, Your Honor, what he understood the telegram to mean.

The Court: When the question is put to him: "What do you understand the telegram to mean", I take that to be equivalent to the question What, according to the custom of business upon the Stock Exchange, does that mean. I think that is the equivalent of it.

Mr. McDonough: Then it would be inadmissible Your Honor because no custom is shown to have been known to Fred Brown.

The Court: Now the witness' answer to that is that the telegram meant to sell at a certain price, or any lower price, or the next best possible price. Now, what do you say to that Mr. Cravens?

Mr. Cravens: That is as much explanatory as to the meaning of the telegram as the first part of it. He says "Will you explain what you understood the telegram to mean" and the answer is that he wanted to sell this cotton at a certain price. That is his explanation of what that telegram meant to them.

Mr. Going: If the Court please, the next question qualifies it.

Mr. McDonough: I do not think the telegram will be sufficient to support your Honor's suggestion that there
96 was any custom. There is nothing in his telegram that would indicate that there was any authority to sell the cotton at 14 cents. There is an enormous range between 17.15 and 17.20 and 14 cents, so enormous as to be a warning and notice to everybody in the world that authority to sell at 17.15 and 17.20 is not authority to sell at 14, and the law, as I understand it, will not permit the introduction of evidence of that kind unless there is some testimony to show that that was known to Mr. Browne. There is not a line or syllable in the rules or regulations of the New Orleans Cotton Exchange that would authorize that proceedure, none. I have searched them through and been unable to find it, and counsel has not pointed it out. That is objected to because there is no authority for any such meaning to be put to it.

Mr. Cravens: May it please the Court, immediately following, as suggested by Mr. Going, he explains what it meant according to the custom and uses of the trade. The testimony shows that Mr. Browne was dealing with Thorn & Maginnis on the New Orleans Cotton Exchange and he is supposed to know what the rules of the New Orleans Cotton Exchange are. Now Mr. McDonough's suggestion that the drop from 17 cents to 14 cents is such and[ anormour] drop as would put them on notice. Now there is another phase to that and that is if Fred Browne had telegraphed them to sell, and that will be borne out by subsequent testimony, at 17.20, a thousand bales at 17.20 and a thousand at 17.15, which they explain means that price or the next best price obtainable, if they hadn't sold for that price and cotton had gone down to ten cents or 13 cents, they would have been responsible to Browne for not selling at that price; if they had not gone on the market at the

time he telegraphed them and sold it for the best price
97 possible, and it had gone down to 14.50, Browne would have had a cause of action against Thorn & Maginnis for the difference. That is what it meant to sell; execute that order at that price or the next best price. Now if cotton goes down gradually, and goes down to 17.20 and 17.15, of course, if the market was stable and gone down gradually and they could have sold at 17.20 and ten at 17.15 they would have been responsible, but as the testimony will show in this case the bottom just dropped out of the market. This is as much explanatory of the meaning of that telegram as the first part of the answer.

Mr. McDonough: The point is, before you can prove a custom of that kind it must be shown that the defendant had knowledge of the custom. Now it is one thing to deal on the New Orleans Cotton exchange with knowledge of the rules and regulations, and another thing to deal with the customs. The custom cannot be proved unless they show that Fred Browne knew the custom.

The Court: The objection is overruled.

Mr. McDonough: Exception.

Q. Well, according to the custom and usage of the trade, what does that telegram mean?

Mr. McDonough: Objected to for the reasons given.

The Court: Overruled and exception noted.

A. Well, that is a stop order, and it is an order placed at a certain price to be executed at that price, or the next best possible price, and on February 1st, the market opened considerably lower than 17.20, and the best price that Mr. Coleman could sell cotton at was 14 cents.

Mr. McDonough: I move to exclude this now: And the best price Mr. Coleman could sell cotton for was 14 cents, because that is a conclusion, the witness himself not being present at that time as I understand it.

98 Mr. Cravens: That would be tenable if the testimony shows he was not present.

The Court: I wish you would be certain about that.

Mr. Cravens: We will concede that.

Q. Then I understand you to say that it was an order to sell, if the market should reach—

A. 17.20 or lower.

Mr. McDonough: Objected to for the same reasons, no custom being shown.

The Court: Overruled. Exception noted.

Q. And if the market opened lower, it was an order to sell at the market? A. At the market.

Mr. McDonough: Objected to because based upon custom and no custom is shown to the knowledge of the defendant.

The Court: Overruled and exception noted.

Q. At that time, as I understood you, Mr. Browne had purchased and open with you, two thousand bales of cotton for delivery in May, 1917? A. That is correct.

Q. And this order was to sell it, if it should reach a certain point? A. Yes, sir.

Q. Or if it declined below that point, it was an order to sell?

To which the defendant objected, which objection was by the court overruled, and the defendant excepted.

A. That is correct.

Q. Take the paper I now hand you and say what it is?

A. It is a broker's contract slip, reading: "Sold to Thorn & Maginnis—from C. P. Ellis & Company, being dated January 25, 1917, reading: "Sold to Thorn & Maginnis of New Orleans, Louisiana, and agreed to deliver them subject to the by-laws, rules and conditions of the New Orleans Coton Exchange and subject to the United States Cotton Futures Act, Section 5." These various purchases we made from them included the one hundred bales of May cotton bought for Fred Browne at 16.83.

Mr. McDonough: Now Your Honor, that was objected to and excluded before. "These various purchases we made from them included the one hundred bales of May cotton bought for Fred Browne at 16.83. They have not offered that paper yet, and I am therefore not in a position to object.

99 The Court: On that statement the objection will be overruled, and your exception noted.

Q. Who signed that paper?

A. That is signed by a member of the firm of C. P. Ellis & Company. I recognize the signature because I have seen it on numerous slips and checks and contracts.

Q. What do you call that paper?

A. That is a broker's contract slip, we call it.

Q. Who prescribes the form of that slip, if you know?
A. The New Orleans Cotton Exchange. It was changed to conform to the United States Cotton Futures Act, I think.

Mr. McDonough: All of it is objected to.

The Court: Overruled and exception noted.

Q. You did, as I understand, answer that that form is prescribed by the New Orleans Cotton Exchange?
A. It is. The form used by all brokers.
Q. What item or items on that contract slip represents cotton purchased for the defendant, Mr. Browne?

Mr. McDonough: That is objected to for the reasons heretofore given, that it varies by oral testimony the written statement before him.

The Court: Overruled and exceptions noted.

A. 100 May bought at 16.83, and also 100 at 16.84. They were bought on different orders, but, of course, this slip shows all purchases from Ellis on that date for various customers.

The Court: As I understand it, that slip showed a contract between Ellis & Company and Thorn & Maginnis?

Mr. Cravens: Yes, sir.

The Court: It don't show a contract between Browne and Thorne & Maginnis?

Mr. McDonough: No, sir, not at all.

The Court: I do not think the rule that you invoke applies in such a case. I understand you that your objection means this: That the name of Mr. Browne does not appear on that paper as a purchaser?

Mr. McDonough: And further that they would not be permitted, even in the contract between Ellis & Company
100 and Thorn & Maginnis to go into that and say there is 1800 bales for Browne.

The Court: The objection is overruled. I think the court is bound by the decision of the Court of Appeals.

Q. Point out the items on that contract slip which were purchased for Mr. Browne?

The defendant objected to the question and answer for the same reasons as stated theretofore, which objection was by the court overruled and defendant excepted.

A. Well, the third item and the sixth item.

Q. If you know, state whether that slip was signed that day by C. P. Ellis & Company?

To which the defendant objected, and the objection being overruled by the court, the defendant excepted.

A. Well, I don't know whether it was signed that day or not, but it must be in our office before nine o'clock the next morning, and it was signed and delivered in our office before nine o'clock on the morning of the 26th.

Mr. Johnson: I offer the paper in evidence, and ask that it be marked plaintiff's exhibit 16½.

The defendant objected on the ground that it does not comply with the cotton futures act, which objection being overruled by the court, the defendant excepted.

Said paper being in words and figures as follows:

"C. P. Ellis & Co.
Cotton Exchange Bldg.

New Orleans, La., Jan 25 1917.

Sold to
Thorn & Maginnis
of New Orleans, La., and agreed to Deliver them subject to the By-Laws, Rules and Conditions of the
New Orleans Cotton Exchange
and subject to the United States Cotton Futures Act, Section 5.

| Bales Cotton | | Delivery | At Cents per Pound for Middling |
|---|---|---|---|
| One | Hundred | May | 16.70 |
| Three | " | " | 16.83 |
| Two | " | " | 16.83 |
| One | " | " | 16.90 |
| Two | " | " | 16.81 |
| One | " | " | 16.84 |

(signed) C. P. ELLIS & CO.
of New Orleans, La."

101 Mr. McDonough: This is also objected to on the ground that neither the name of Fred Browne, the defendant, nor the name of the seller is on that slip, and therefore it is not signed by the party to be charged within the meaning of the United States Cotton Futures Act, and upon the further ground that they are not permitted to vary written

contracts by selecting certain items and saying that they belong to Browne or somebody else.

The Court: Objection overruled and exception noted.

Q. Take the paper I now hand you, and say what that is?
A. It is a broker's contract slip from Hayward Howard & Company, dated January 25th, 1917, reading: "Sold to Thorn & Maginnis—

Q. Well, you need not read it. What items on there—what cotton on there was purchased for Mr. Browne?

The defendant objected for the reasons as stated to Exhibit 16½, which objection was by the court overruled and the defendant excepted.

A. The first item, 100 May, at 16.83.
Q. Do you know the signature of Hayward Howard & Company?
A. I do; I know that to be the signature of Mr. Ashton Hayward.
Q. Is he a member of the firm of Hayward Howard & Company? A. He is a member of the firm.

Mr. Johnson: I offer the paper in evidence and ask that it be marked Plaintiff's exhibit 17.

The defendant objected to the introduction of plaintiff's exhibit 17, on the same grounds as urged to Exhibit 16½, which objection was overruled by the court and the defendant excepted.

Said Exhibit 17 being in words and figures as follows:

"Plaintiff's Ex. 17.

Hayward Howard & Co.
826 Common Street

New Orleans, La. Jan. 25, 1917.

Sold to

Thorn & Maginnis

of New Orleans, La., and agreed to deliver them subject to the By-Laws Rules and Conditions of the

New Orleans Cotton Exchange

and subject to the United States Cotton Futures Act, Section 5.

| Bales Cotton | Delivery | At Cents per Pound for Middling |
|---|---|---|
| 100 | May | 16.83 |
| 100 | Mch | 16.74 |

102 (Signed) HAYWARD HOWARD & CO.,
By A. H. Hayward".

Q. Take the paper I now hand you, and state what it is?
A. It is a broker's contract slip from Silvan Newburger & Company, dated January 25, 1917, showing the purchase of 300 May, at 16.84, which was bought for Mr. Browne.
Q. Do you recognize the signature? A. Yes, sir.
Q. Is that the signature of Silvan Newburger & Company?
A. Yes, sir; that is the signature of Silvan Newburger & Co.

Mr. Johnson: I offer the paper in evidence, and ask that it be marked Plaintiff's Exhibit 18.

The defendant objected to the introduction of Plaintiff's Exhibit 18 for the same reasons as urged to the contracts theretofore introduced, which objection was by the [court] overruled and the defendant excepted.

Said Exhibit being in words and figures as follows:

"Plaintiff's Exhibit 18.

New Orleans, La., Jan. 25 1917

Sold to
Thorn & Maginnis of New Orleans, La. And Agreed to Deliver them subject to the By-laws, Rules and Conditions of the New Orleans Cotton Exchange
and subject to the United States Cotton Futures Act, Section 5.

| Bales Cotton | Delivery | At Cents per Pound for Middling. |
|---|---|---|
| Three Hundred | May | 16.84 |

(Signed) SILVAN NEWBURGER & CO."

Q. Take the paper I now hand you, and state what it is?
A. Broker's contract slip dated January 27th, 1917, from Harrison & Lawrence. Now, I will tell you, I might have called this firm J. M. Harrison & Company.
Q. Which was formerly J. M. Harrison & Company?
A. Yes; they are successors to that firm. It is a broker's contract slip from Harrison & Lawrence, dated January 27th, 1917, showing the purchase of 100 May, at 17.06. That was for Mr. Brown.

Mr. McDonough: The same objection to that.

The Court: Overruled and exception noted.

Q. Do you recognize the signature? A. I do.
Q. Do you know the signature?

A. Oh, I know the signature from having seen it on numerous contracts and checks.

Mr. Johnson: I offer the paper in evidence, and ask that it be marked Plaintiff's exhibit 19.

Mr. McDonough: I object for the same reasons as given heretofore.

The Court: Objection overruled and exception noted.

103 "Plaintiff's Ex. 19

Harrison & Lawrence
Cotton Exchange Bldg. New Orleans La. Jan 27 1917

Sold to

Thorn & Maginnis of New Orleans, La., And agreed to deliver them subject to the By-Laws, Rules and Conditions of the New Orleans Cotton Exchange
and subject to the United States Cotton Futures Act, Section 5.

| Bales Cotton | Delivery | At Cents per Pound For Middling |
|---|---|---|
| One Hundred | May | 17.06 |

(Signed) HARRISON & LAWRENCE
of New Orleans, La."

Q. Take the paper I now hand you, and state what it is?
A. That is a broker's contract slip from Pinckard & Kennedy, dated January 27, 1917, showing the purchase of 100 May at 17.06 for Mr. Browne.

Mr. McDonough: Same objection to that as heretofore.

The Court: Overruled and exception noted.

A. (Continued) I recognize the perpro of Alfred Page on that slip.

Mr. Johnson: I offer the paper in evidence and ask that it be marked Plaintiff's Exhibit 20.

Mr. McDonough: The same objection.

The Court: Overruled and exception noted.

Mr. Cravens: It only has one item on that and we might as well consider them in evidence.

The Court: And I suppose you will concede also that none of those slips that are now being offered in evidence

showing a purchase by Thorn & Maginnis have Mr. Browne's name on them at all?

Mr. Cravens: No, sir; they don't mention Mr. Browne's name at all, but each item that has been identified by any witness as having been bought for Mr. Browne is a separate item.

Said Exhibit 20 being in words and figures as follows:

"Plaintiff's Ex. 20

Pinckard & Kennedy,
New Orleans, La.

New Orleans, La., Jan 27 1917

Sold to

Thorn & Maginnis of New Orleans, La., and agreed to
104 Deliver them subject to the By-Laws, Rules and Conditions of the

New Orleans Cotton Exchange

and subject to the United States Cotton Futures Act, Section 5.

| Bales Cotton | Delivery | At Cents Per Pound For Middling. |
|---|---|---|
| One Hundred | May | 17.06 |

(signed) ppro. PINCKARD & KENNEDY,
A. Page."

Q. Take the paper I now hand you and state what it is?
A. That is a broker's contract slip from H. D. Cothran & Company, dated January 29th, 1917. The fourth item shows a purchase of 100 May at 16.88 for Fred Browne.

Mr. Johnson: I offer the document in evidence, and ask that it be marked plaintiff's exhibit 21.

Mr. McDonough: I make the same objection.

The Court: Overruled.

Mr. McDonough: Exception.

Said exhibit 21 being in words and figures as follows:

"Plaintiff's Ex. 21

H. D. Cothran & Company
405 Cotton Exchange Bldg.

New Orleans, La. Jan 29 1917

Sold to

Thorn & Maginnis of New Orleans, La., And agreed to Deliver them subject to the By-Laws, rules and Conditions of the New Orleans Cotton Exchange and subject to the United States Cotton Futures Act, Section 5.

| Bales Cotton | Delivery | At Cents per Pound For Middling. |
|---|---|---|
| One Hundred | July | 17.10 |
| One " | July | 16.93 |
| One " | May | 16.85 |
| One " | May | 16.88 |

(signed) H. D. COTHRAN & Co.
of New Orleans, La."

Q. Take the paper I now hand you and state what it is?

A. That is a broker's contract slip from H. & B. Beer, dated January 29th, 1917. That shows 400 May, bought at 17.08, for account of Fred Browne; 300 of the first item and 100 of the third item.

Mr. Johnson: I offer the document in evidence, and ask that it be marked Plaintiff's Exhibit 22.

Mr. McDonough: I make the same objection.

The Court: Overruled.

Mr. McDonough: Exception.

Said exhibit 22 being in words and figures as follows:

105 "Plaintiff's Ex. 22

H. & B. Beer
325 Baronne Street

New Orleans, La. 1/29/17

Sold to

Thorn & Maginnis & Co. of New Orleans, La., and agreed to Deliver them subject to the By-Laws, Rules and Conditions of the New Orleans Cotton Exchange and subject to the United States Cotton Futures Act, Section 5.

| Bales Cotton | Delivery | At Cents Per Pound for Middling |
|---|---|---|
| Three Hundred | May | 17.08 x 300 |
| One " | do | 17.07 |
| Three " | do | 17.08 x 100 |
| Two " | Mch | 16.85 |

per pro H. & B. BEER,
G. E. Cornwell,
Of New Orleans, La."

Q. Take the paper I now hand you and state what that is
A. It is a broker's contract slip from Pinckard & Kennedy, dated January 29th, 1917, showing the purchase of 200 May, at 16.88 for account of Fred Browne. I recognize the signature of Alfred Page on there.

Mr. Johnson: I offer the paper, and ask that it be marked Plaintiff's exhibit 23.

Mr. McDonough: The same objection. I am objecting specifically on the ground that Browne's name does not appear there.

The Court: I understand, and of course, it was the ruling on that that the Court of Appeals held to be in error before, and the court will change its ruling in [in] accord with the opinion. Overruled.

Mr. McDonough: Exception.

Said exhibit 23 being in words and figures as follows:

"Plaintiff's Ex. 23.

Pinckard & Kennedy,
New Orleans, La.

New Orleans, La. Jan 29 1917

Sold to
Thorn & Maginnis of New Orleans, La., and agreed to Deliver them subject to the By-Laws, Rules and Conditions of the New Orleans Cotton Exchange
and subject to the United States Cotton Futures Act, Section 5.

| Bales Cotton | Delivery | At Cents Per Pound For Middling |
|---|---|---|
| two Hundred | May | 16.88 |

ppro. PINCKARD & KENNEDY,
A Page".

106 Q. Take the paper I now hand you and state what it is?
A. It is a broker's contract slip from John F. Clark & Company, dated January 30th, 1917, showing 200 May bought at 16.93 for account of Fred Browne. I recognize the signature on that slip also.

Mr. Johnson: I offer the document in evidence and ask that it be marked Plaintiff's Exhibit 24.

Mr. McDonough: The same objection.

The Court: Overruled.

Mr. McDonough: Exception.

Said exhibit 24 being in words and figures as follows:

"Plaintiff's exhibit 24

Jno. F. Clark & Co.
818 Gravier Street.

New Orleans, La., Jan 30 1917

Sold to
Thorn & Maginnis of New Orleans, La. And Agreed to Deliver them subject to the By-Laws, Rules and Conditions of the New Orleans Cotton Exchange
and subject to the United States Cotton Futures Act, Section 5.

| Bales Cotton | Delivery | At Cents Per Pound For Middling. |
|---|---|---|
| Two Hundred | May | 16.93 |

(signed) JNO. F. CLARK & CO."

Q. Take the paper I now hand you and state what it is?
A. It is a broker's contract slip from Felix Couturie & Company.

Mr. Johnson: I offer the document in evidence, and ask that it be marked Plaintiff's Exhibit 25.

Said exhibit 25 being in words and figures as follows:

"Plaintiff's Ex. 25

Felix Couturie & Co.,
730 Gravier Street

New Orleans, La. Jan 31 1917

Sold to

Mess. Thorn & Maginnis of New Orleans, La. And Agreed to Deliver them subject to the By-Laws, Rules and Conditions of the New Orleans Cotton Exchange and subject to the United States Cotton Futures Act. Section 5.

| Bales Cotton | Delivery | At Cents Per Pound For Middling. |
|---|---|---|
| one Hundred | May | 17.13 |
| one " | do | 17.09 |

pp FELIX COUTURIE & CO.
J. P. Schneider."

Q. Take the paper I now hand you and state what it is?

A. That is a broker's contract slip from Shepard & Gluck, dated January 31st, 1917, showing purchase of 200 May at 17.13 for account of Fred Browne. I recognize the per-pro signature of Mr. Edward Hyman on this slip.

107 Mr. Johnson: I offer the document in evidence, and ask that it be marked plaintiff's exhibit 26.

Mr. McDonough: The same objection.

The Court: Overruled.

Mr. McDonough: Exception.

Said exhibit 26 being in words and figures as follows:

"Plaintiff's Ex. 26

Office of
Shepard & Gluck
843 Union Street New Orleans, La., Jan. 31, 1917

Sold To

Thorn & Maginnis of New Orleans, La. And agreed to deliver them subject to the By-Laws, Rules and Conditions of the New Orleans Cotton Exchange and subject to the United States Cotton Futures Act, Section 5.

| Bales Cotton | Delivery | At Cents per Pound for Middling |
|---|---|---|
| One Hundred | Oct. | 16.00 |
| Two " | May | 17.13 |

SHEPARD & GLUCK
ppro. Edw. Hyman of New Orleans, La."

Q. Take the paper I now hand you and state what it is?
A. That is a broker's contract slip of Thorn & Maginnis, dated February 1st, 1917, showing that they sold to Airey & Stouse, 2000 May, at 14 cents—the first item on the slip.
Q. Wait a minute. For whom did you sell it?
A. For account of Fred Browne.

Mr. McDonough: The same objection.

The Court: Overruled.

Mr. McDonough: Exception.

Q. Who signed that slip?
A. Signed by Airey & Stouse. I recognize the signature.
Q. Is that their signature?
A. It is. I have seen the signature on numerous contracts and checks.

Mr. Johnson: I offer the paper in evidence, and ask that it be marked Plaintiff's Exhibit 27.

Mr. McDonough: The same objection. I want to call the court's attention to the fact that in the sold slips which have been introduced heretofore, the plaintiff introduced only the sold slips and did not introduce the bought slips. Now they are offering when they attempt to prove the sale of 2000 bales of cotton the bought slip, and do not introduce the sold slip, and I make the objection that they can't be inconsistent
108 and prove the sales by the bought slip and at the same time prove the purchase of the 2000 by a sold slip. In other words, if they prove the sale by a bought slip they would have to prove the purchase by a sold slip.

The Court: Now I understand that you will base an exception on that at each time as the witness' testimony is read?

Mr. McDonough: This is the first time it has arisen. Heretofore they have been offering the sold slips, when they bought and now they are offering to prove the sale of 2000 bales and instead of introducing the sold slip they introduce a bought slip signed by Thorn & Maginnis.

Mr. Cravens: Each item heretofore, Your Honor, has been a purchase for the account of Mr. Browne, and we proved that by the signature of the parties who sold it to them. Now we are proving the first sale and we are proving it by the signature of the parties who bought it from them.

The Court: The objection is overruled.

Mr. McDonough: Save an exception.

"Plaintiff's Ex. 27

Office of
Thorn & Maginnis
209 Varieties Bldg. New Orleans, La. Feb. 1, 1917.

Bought From

Messrs. Thorn & Maginnis, of New Orleans, La., and agreed to Receive from them subject to the By-Laws, Rules and Conditions of the New Orleans Cotton Exchange and subject to the United States Cotton Futures Act, Section 5.

| Bales Cotton | | Delivery | At Cents per Pound for Middling |
|---|---|---|---|
| Twenty | Hundred | May | 14 cts |
| One | " | " | 14.20 |
| One | " | " | 14.25 |
| One | " | July | 16.10 |
| One | " | May | 14.45 |
| Three | " | July | 16.10 |
| One | " | Do | 16.10 |
| One | " | May | 14.80 |
| One | " | May | 14.50 |

(signed) AIRY & STOUSE."

Q. Who are C. P. Ellis & Company, Hayward Clark & Company, Silvan Newburger & Company, Harrison & Lawrence, Pinckard & Kennedy, H. D. Cothran & Company H. & B. Beer, John F. Clark & Company, Felix Couturie & Company, Shepard & Gluck and Airey & Stouse?

109

A. They are brokers and members of the New Orleans Cotton Exchange, and cotton brokers on the New Orleans Cotton Exchange; all members of the New Orleans Cotton Exchange.

Q. Are all of these papers offered in evidence, and marked from 16½ to 27, inclusive, originals? A. They are.

Q. Delivered to you by these firms? A. Yes, sir.

Q. Did you inform any of those brokers from whom you purchased these 2000 bales of cotton for delivery in May, or to whom you sold 2000 bales of cotton for delivery in May,—did you inform any of them that the transactions were for the account of Fred Browne, the defendant?

A. No, we did not; it is not customary to do that. Cotton is bought and sold for an undisclosed principal.

Mr. McDonough: I move to exclude the testimony relative to the custom to do that.

The Court: Overruled.

Mr. McDonough: Exception.

Q. As I understand it then, it is not the custom to give the name of the broker or principal for whom you are dealing?
A. It is not.

Mr. McDonough: Same objection to that.

The Court: Overruled.

Mr. McDonough: Exception.

Q. Is that ever done?

Mr. McDonough: Objected to.

The Court: Overruled and exception noted.

A. I have never heard of it.
Q. Take the paper I now hand you and state what it is? Identify it?
A. That is a duplicate of account sales rendered to Fred Browne on February 1st, 1917, for 2,000 bales of May cotton, showing a loss of $29,975.00.
Q. State what was done with the original of that paper?
A. The original was mailed to Mr. Browne, February 1st, at Fort Smith, Arkansas.
Q. Did you mail it Mr. Kehoe?
A. No, I did not. Our mailing clerk handles that.

Mr. Johnson: I offer the paper in evidence, and ask that it be marked Plaintiff's Exhibit 28.

Mr. McDonough: I object to it on the ground that it does not show the complete dealings, as shown by the com-
110 plaint itself, between the plaintiffs and defendant. The complaint is a statement of account beginning September 22, 1916 and runs on down and this is only a part of it.

The Court: The objection is overruled.

Mr. McDonough: Exception.

"Plaintiff's Ex. 28

Statement Of Purchase & Sale 2000 Bales Cotton May delivery at NO

By Thorn & Maginnis, for acc't of Mr. Fred Browne

Subject to the by-laws, rules and conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section 5.

| Bought | | | | Sold | |
|---|---|---|---|---|---|
| Jan 25 | 2 | 16.83 | Feb 1 | 20 | 14.00 |
| " | 4 | 16.84 | | | |
| 27 | 2 | 17.06 | | | |
| 29 | 4 | 17.08 | | | |
| " | 3 | 16.88 | | | |
| 30 | 2 | 16.93 | | | |
| 31 | 3 | 17.13 | | | |

(Duplicate)

No. 25277

| | |
|---|---|
| 5935 pts. loss | 29675... |
| Brokerage | 300... |
| Telegrams | ..... |
| Net, Dr | 29.975... |

THORN & MAGINNIS
Per L

E & O. E.
New Orleans, La: 2/1/1917"

Q. Does plaintiff's exhibit 28 show the commissions charged Mr. Browne for purchasing and selling that cotton?

Mr. McDonough: That is objected to because it calls for a conclusion?

The Court: Overruled.

Mr. McDonough: Exception.

A. It does. It shows $300.00 commission; as a non-member of the Exchange he is charged $15.00 per 100 bales.

Q. Is that charge in accordance with the rules and regulations of the Exchange or not?

Mr. McDonough: It is objected to because the rules themselves are the best evidence.

The Court: The rules will be presented?

Mr. Cravens: Yes, sir.

The Court: Overruled, and exception noted.

111 A. It is subject to the by-laws, rules and conditions of the New Orleans Exchange and United States Cotton Futures Act. Well, of course, the commissions are not regulated by the United States Cotton Futures Act.

Mr. McDonough: Objected to because the rules would be the best evidence, and I move to exclude that [bevause] it is calling for a conclusion and stating a proposition of law.

The Court: Objection overruled and exception noted.

Q. I notice that Plaintiff's Exhibit 28 shows a loss—alleged loss—in and about the purchase and sale of these 2,000 bales of cotton for delivery in May, of $29,675.00. Please state, if you know, whether or not that sum of money was paid out by the plaintiffs, Thorn & Maginnis, for the account of Mr. Fred Browne, the defendant?

Mr. McDonough: Objected to.

The Court: Overruled and exception noted.

A. I do know it was paid out.
Q. To whom was it paid?
A. Well, it was paid to various brokers by contracts settlements and ring settlements. Our books are figured each day, and whatever brokers we owe money to, it is paid out in lump sums. But, of course, we do not always buy and sell for the customer, to the same broker; but I know that the money has been paid out, and, for further proof, I can mention the fact that May deliveries have all been liquidated on our books now for customers and brokers and the account balances.
Q. I hand you what purports to be a telegram to the defendant. Please state in whose handwriting it is?
A. It is in my own handwriting.
Q. Did you send that telegram yourself? A. I did.
Q. Please read the telegram?

Mr. McDonough: Objected to as not competent, relevant or material.

The Court: Objection is overruled.

Mr. McDonough: Exception.

A. It is a Western Union telegram to Fred Browne, Fort Smith, Arkansas, dated February, 1st, 1917, reading: "Please deposit amount due to balance account. Answer. Signed Thorn & Maginnis".

Mr. Johnson: I offer the telegram in evidence, and ask that it be marked Plaintiff's Exhibit 29.

Said exhibit 29 being in words and figures as follows:

"Plaintiff's Ex. 29.

Feb. 1, 1917.

Fred Browne, Ft. Smith, Ark.

112 Please deposit amount due to balance account. Answer.

(signed) THORN & MAGINNIS."

Q. I hand you another paper which purports to be a telegram sent by your firm to the defendant Browne. Please examine it and state whether or not that telegram was filed with the Telegraph Company, on February 1st.

A. It was. I wrote this on the typewriter myself. It is a Western Union telegram dated February 1st, 1917, to Fred Browne, Fort Smith, Arkansas, reading: "Kindly answer our wire asking for deposit. If cannot meet call in full now deposit what can and balance later. Awaiting reply by wire. Signed Thorn & Maginnis".

Mr. McDonough: That telegram is objected to because it is dated February 1st, and after the transaction was closed

The Court: Objection overruled and exception noted.

Q. I believe you said you sent that telegram yourself?

A. I did.

Q. You filed the original with the Telegraph Company's office? A. The Western Union.

Mr. Johnson: I offer in evidence the said telegram and ask that it be marked Plaintiff's Exhibit 30.

Mr. McDonough: The same objection.

The Court: Overruled and exception noted.

Said exhibit 30 being in words and figures as follows:

"Plaintiff's Ex. 30.

February 1st, 1917.

Fred Browne, Fort Smith, Ark.

Kindly answer our wire asking for deposit. If cannot meet call in full now deposit what can and balance later. Awaiting reply by wire.

(signed) THORN & MAGINNIS".

Q. Did you receive any reply to that telegram?

A. Yes, sir; we received a reply to this last wire.

Q. Is the paper that I now hand you the reply that you received to the telegram that you have just read?

A. Yes; this is a Western Union telegram dated Fort Smith, Arkansas, 9:25 P. M., February 1st, 1917, to Thorn &

Maginnis, New Orleans, Louisiana, reading: "Can you accept one-tenth now balance ten annual installments. Have borrowed limit. Fred Browne".

Mr. McDonough: I object to that as incompetent, irrelevant and immaterial.

The Court: Overruled and exception noted.

Mr. Johnson: I offer the said telegram in evidence, and ask that it be marked Plaintiff's Exhibit 31.

113 "Plaintiff's Ex. 31.

Ft. Smith, Ark. 925 PM Feb 1, 1917.

Thorn & Maginnis,
New Orleans, La.

Can you accept one tenth now balance ten annual installments have borrowed limit

FRED BROWNE, 956 PM."

Q. I hand you a paper that purports to be a telegram sent by your firm to the defendant, on February 2, 1917. Please state whether or not that was sent, and read the telegram into your deposition.

Mr. McDonough: Objection.

The Court: Overruled.

Mr. McDonough: Exception.

A. Yes, sir, this telegram was sent by myself, a Western Union telegram, dated New Orleans, Louisiana, February 2nd, 1917 addressed to Fred Browne, Fort Smith, Arkansas, reading: "Yours deposit one tenth this morning have bank wire, endeavor your utmost arrange another ten percent today or tomorrow balance will arrange with notes answer. Thorn & Maginnis."

Mr. Johnson: I offer the said telegram in evidence, and ask that it be marked Plaintiff's Exhibit 32.

Mr. McDonough: The same objection.

The Court: Overruled and exception noted.

Said Exhibit 32 being in words and figures as follows:

"Plaintiff's Ex. 32

New Orleans, La Feb. 2nd, 1917.

Mr. Fred Brown,
Ft. Smith, Ark.

Yours deposit one tenth this morning have bank wire, endeavor your utmost arrange another ten percent today or tomorrow balance will arrange with notes answer.

THORN & MAGINNIS."

Q. I hand you another paper which purports to be a telegram sent to the defendant on February 2, 1917, and I ask you if the telegram was in fact sent and in whose handwriting it is and who delivered it to the Telegraph Company?

A. This is a Western Union telegram written by Mr. Thorn.

Q. Do you recognize the handwriting?

A. I do. It is dated February 2, addressed to Fred Browne, Fort Smith, Arkansas, reading: "Did you get our wire this morning? Wire what you have done. Liverpool chief buyer today. Thorn & Maginnis."

Mr. Johnson: I offer the said telegram in evidence, and ask that it be marked Plaintiff's exhibit 33.

Mr. McDonough: The same objection.

The Court: Overruled and exception noted.

Said exhibit 33 being in words and figures as follows:

"Plaintiff's Ex. 33

Feb. 2, 1917.

Fred Browne,
Ft. Smith, Ark.

114 Did you get our wire this morning. Wire what have you done. Liverpool chief buyer today.

(signed) THORN & MAGINNIS."

Q. I hand you a paper which purports to be a telegram sent to Fred Browne, on February 2, 1917. Inspect the paper and state whether or not the telegram was sent, and read it?

Mr. McDonough: I object.

The Court: Overruled and exception noted.

A. This telegram was sent by me, and written by me, a Western Union wire, dated New Orleans, February 2, 1917, to Fred Browne, Fort Smith, Arkansas, reading: "Kindly

reply to our wires stating what have done in matter of deposit." Signed "Thorn & Maginnis."

Q. Did you write that telegram?

A. I did, on my typewriter.

Q. Did you deliver the original of that to the Telegraph Company?

A. I did.

Mr. Johnson: I offer in evidence the said telegram, and ask that it be marked Plaintiff's Exhibit 34.

Mr. McDonough: The same objection.

The Court: Overruled and exception noted.

Said exhibit 34 being in words and figures as follows:

"Plaintiff's exhibit 34

Feb. 2, 1917.

Fred Browne,
Fort Smith, Ark.

Kindly reply to our wires stating what have done in matter of deposit.

THORN & MAGINNIS."

Q. Did you receive any answer to this telegram which you have just identified?

A. We did receive an answer.

Q. Is the paper that I now hand you the answer that you received?

A. That is the answer, yes—a Western Union telegram.

Q. Wait a moment. Please read the telegram?

Mr. McDonough: Same objection.

The Court: Overruled and exception noted.

A. A Western Union telegram dated Fort Smith, Arkansas, 3.40 P. M., February 2, 1917, addressed to Thorn & Maginnis, New Orleans, Louisiana, reading: "Not able to comply yet. May by tomorrow. Signed Fred Browne."

Q. Is that the original telegram received by you or your firm from the Telegraph Company?

A. It is.

Q. Are all the papers which have been introduced in evidence as telegrams received from Fred Browne, the original papers delivered to you by the Telegraph Company?

A. Yes.

115 Mr. Johnson: I offer the paper in evidence and ask that it be marked plaintiff's exhibit 35.

Said exhibit 35 being in words and figures as follows:

"Plaintiff's Ex. 35

Ft. Smith, Ark. 340 PM Feby 2 1917

Thorn and Maginnis,
New Orleans, La.
Not able to comply yet may by tomorrow.
(signed) FRED BROWNE, 401 PM".

Q. Take the paper which I now hand you, and which purports to be a telegram sent by your firm to the defendant, and state whether or not it was delivered to the Telegraph Company, and in whose handwriting it is?

A. It is my handwriting. I delivered it to the Western Union Telegraph Company. It is a telegram dated February 5th, 1917 to Fred Browne, Fort Smith, Arkansas, reading: "We await your answer our reply your proposition. Kindly wire this morning. Signed Thorn & Maginnis."

Mr. Johnson: I offer the telegram in evidence, and ask that it be marked Plaintiff's Exhibit 36.

Mr. McDonough: I object for the same reasons.

The Court: Overruled and exception noted.

Said Exhibit 36 being in words and figures as follows:

"Plaintiff's Ex. 36 Feby. 5, 1917.

Fred Browne,
Ft. Smith, Ark.
We await your answer our reply your proposition. Kindly wire this morning. (signed) THORN & MAGINNIS."

Q. I believe you have heretofore testified that you saw Mr. Browne, the defendant, on or about February—

A. February 8th, 1917.

Q. Please state whether or not at the time he admitted having made these transactions with your firm of Thorn & Maginnis, about which you have heretofore testified?

Mr. McDonough: Objected to as incompetent, irrelevant and immaterial.

The Court: Overruled and exception noted.

A. Well, he did admit the loss. He admitted sending the orders and also the offer of one-tenth cash and the balance notes. In fact, I showed him the telegram when I was out there at Crowder, Oklahoma.

Q. You went to Crowder? Go ahead?

A. I went to Crowder, and he admitted the purchase of the cotton and sending in the stop order and the offer of one-tenth cash, as I have already stated.

Q. Did he admit sending the order of February 1st, asking your firm to sell twenty hundred bales of cotton for delivery in May?

A. He did.

Mr. McDonough: Objected to as incompetent, irrelevant and immaterial.

116 The Court: Overruled and exception noted.

Q. What did he say to you, if anything, in respect to his telegram of February 1st, in which he offered to send you ten percent of his then debit balance in cash?

Mr. McDonough: The same objection.

The Court: Overruled and exception noted.

A. He said, at the time that he felt that he was responsible for the loss, but that he afterwards had a talk with some of his friends who gave him to understand that he was not legally responsible.

Q. Did he mention who those friends were?

A. No, he did not.

Q. Did he say whether they were attorneys at law, or not?

A. No, in fact he mentioned that one was a banker.

Q. But did not give his name, as I understand?

A. No, he did not give his name.

Q. Did he state anything in regards to his knowledge of the firm of Thorn & Maginnis?

A. Well, he said he had looked into the standing of Thorn & Maginnis, and was satisfied that it was a responsible firm, before placing his money with us.

Q. Did he say anything in regard to his attitude if the course of the market had been upwards on February 1st, instead of downward?

Mr. McDonough: Objected to as incompetent, irrelevant and immaterial.

The Court: On what ground do you think that was relevant?

Mr. Cravens: To show it was a bona fide transaction; to show he was in earnest about it.

The Court: Objection is overruled. It will be covered by the instructions.

A. Well, I asked him that question as to whether if the Kaiser's message on that day, if it had had the opposite effect and the market had gone in his favor, if he would have insisted upon his profits, and any gains made in his contracts, to which he answered, yes, he would.

Q. Did he say anything with regards to his ability to raise money at the time?

Mr. McDonough: Objected to.

The Court: Overruled and exception noted.

A. Well, he told me that he had some mortgage notes about falling due, and it was after I threatened suit that he said he would not like that to happen; that he knew it would hurt him, because he had some mortgage notes falling due, and it might affect an extension. He did tell me that he had borrowed to the limit, and that he was not in a position to get any
117 cash at the moment, but he led me to believe that if there was a possible chance, up to that time, that he would have paid the debt, if he could have gotten hold of the cash.

Mr. McDonough: The same objection.

The Court: Overruled and exception noted.

Q. Did he say anything during those conversations concerning his proposition to pay the account in future?

Mr. McDonough: To which we object as incompetent and immaterial.

The Court: Now on what ground do you think any further negotiations or statements are competent? You have shown according to the testimony from this witness that he admitted that he had made the purchases, sent the telegrams, according to the statement of that witness; he admitted the liability. Now then, what more is there that would be relevant, that would add anything to it?

Mr. Going: The only thing is that his going to a lawyer is an after-thought pure and simple.

The Court: Suppose it is an after-thought. Will the court instruct the jury that if it was an after-thought it is not a good defense?

Mr. Going: No, sir. Well, there never was an answer to that and we have been wasting time.

The Court: Then the objection to it ought to be sustained?

Mr. Going: Why certainly.

A. What I want to get at is that after I received the reply, I showed him my answer.

Q. You showed him the telegram you received from the firm?

A. Yes, I showed him the telegram.

Q. Well, refresh your memory, if necessary, and tell us what telegram you showed him?

Mr. McDonough: That is objected to.

The Court: Overruled and exception noted.

118 A. Well, it was a telegram—they wired me to go back to Fort Smith and to take immediate action to protect our interest; so I showed him this telegram, and he held his head for awhile, and it seemed as if he would not like to have me to do anything like that. In fact he told me so. He said that if we would only let him alone for awhile that he would see if he could not do something in the matter; that he was just then about to drill for oil on some of his land north of Crowder, and that he had geologists pass on the property, and that it had very good indications, and that if he did strike oil up there, why, he would pay the amount due.

Mr. McDonough: I object and move to exclude that.

The Court: It may stand.

Mr. McDonough: Exception.

Q. I hand you a paper and ask you if this is the telegram which you received from your firm, and which you showed the defendant, Browne?

A. Yes, that is the telegram.

Mr. Johnson: I offer the paper in evidence, and ask that it be marked Plaintiff's Exhibit 37.

Mr. McDonough: It is objected to.

The Court: Overruled and exception noted.

Said exhibit 37 being in words and figures as follows:

"Plaintiff's Ex. 37 New Orleans, La 1147 AM
Feby 8th, 1917.

Miles Keho,
Crowder, Okla.

Engage attorneys have them take necessary action protect our interests no necessity hurry if you can accomplish results by retiring Ft. Smith, THORN & MAGINNIS, 1235 PM".

Q. Did he at any time, deny having made these various transactions—

Mr. McDonough: Objected to as not being competent, relevant or material. This is after the close of the deal.

The Court: Objection overruled. On what theory do you think that is competent, a negative statement and he has already detailed all of the conversation.

Mr. Cravens: That is probably true, Your Honor.

The Court: Objection sustained; that will be stricken out.

Mr. Cravens: We offer to prove his answer as set
119 down in the deposition.

The Court: Very well; the offer will be refused.

Q. Wait a minute. —about which you have testified?

Mr. McDonough: The same objection to that.

The Court: Objection will be sustained.

Mr. Cravens: We offer to prove that his answer would be "At no time. He acknowledged everything".

The Court: Objection will be sustained.

Mr. Cravens: Plaintiffs except.

Q. Did he acknowledge in words, that he had 2,000 bales of cotton purchased through your firm on February 1st, which he sold out on February 1st?

Mr. McDonough: Objected to as incompetent, irrelevant and immaterial.

The Court. Well the plaintiff does not contend that the conversation has not been given. These are simply negative statements. I think the "Yes, he acknowledged it" should be stricken out and the other portion of it as to what he actually did is admissible.

A. I went into that matter with him and he acknowledged all that, and that when he sent that "stop" in, he had no idea the market was going so low.

Q. Did he, at any time, dispute the correctness of the loss as shown on the statement rendered him, of $29,975.00?

Mr. McDonough: Objected to for the same reason.

The Court: Overruled and exception noted.

A. At no time.

Q. Were all of these transactions which are now in controversy made in the regular course of [vusiness], and in accordance with the rules and regulations of the New Orleans Cotton Exchange?

Mr. McDonough: Objection.

The Court: Overruled and exception noted.

A. They were.

Cross-Examination

Read by Mr. McDonough:

Q. Mr. Kehoe, how long have you been engaged in the cotton business in New Orleans?

120 A. Oh, I guess about twenty years.

Q. About twenty years? A. Yes.

Q. Do you know the average number of bales of spot cotton delivered in May for that period of time?

A. No, I have no idea.

Q. Have you any information at your command by which you can obtain that data?

A. I think we could, from the records of the Cotton Exchange.

Q. Will you obtain that for me?

A. For how long a period?

Q. Oh, for the last five years.

A. Why, yes.

Q. What was the number of bales, or what were the number of bales that were sold on the first day of February, in what is known as May futures, or May delivery cotton; that is, for the year, 1917?

A. Well, I am not in a position to answer that question. I have no means of telling.

Q. Have you no records to which you have access by which you could obtain it?

A. I don't think any brokers keep records of that kind. I think we might secure it from the Cotton Exchange.

Q. I don't ask you if you keep it, but have you the means by which you could obtain that information?

A. I don't know.

Q. You mean to say you have been in the cotton business here twenty years, and cannot tell the number of bales of cotton sold on any one day in your cotton market here for delivery in any one certain month?

A. Well, I feel sure you can get it from the records of the Cotton Exchange.

Q. You can get it from the records of the Cotton Exchange?

A. Yes, I think so.

Mr. Johnson: Are you certain of that?

A. I am not certain, no sir; I have never had the question come up before.

By Mr. Andrews:

Q. In the season, you keep track of the cotton market, don't you, and the movement of cotton?

A. Sir?

Q. It is a part of your business life, isn't it?

A. Yes, sir.

Q. You know how much cotton is offered and how much is sold each day, do you not?

A. No, I could not say that.

Q. Do you not know, at the close of business each day, about how much has been offered on your cotton exchange?

A. No.

Q. And your firm has no means of knowing?

A. I don't think. We do not keep a record of every trade that goes across the ring.

Q. I did not ask you that, you know, Mr. Kehoe. That is not what I asked you. I asked you if you had no means of knowing about what it was?

A. I could only refer to the records of the Cotton Exchange.

Q. You issue from time to time a market letter, don't you?

A. Yes.

Q. Did you issue one on the first of February, 1917?

A. Well, I don't remember.

Q. You don't know? A. No, I do not know.

121 Q. You do not know whether your firm issued one or not?

A. I do not remember.

Q. You do not know. What was the highest price reached upon your market that day for May deliveries of cotton upon the basis of this which you say you handled for Mr. Browne?

A. Well, now, I do not remember the high price that day.

Q. You don't remember it? A. No.

Q. Do you remember the price at which it closed the day before?

A. I think it was about 17.24, something like that.

Q. 17.24. If you had executed Mr. Browne's stop order, as you call it, at 10 points loss, what would that have been?

A. Ten points loss?

Q. Yes?

A. Well, that would be ten points from the price he bought it at, before the close of the market.

Q. No, you said that the market closed at 17.24.

A. I say, about; I am not positive about the market.

Q. Well, about. You had a stop order to execute, in which he said stop at ten points loss, did you not?

A. We, had a stop order; it was not ten points loss; it was one thousand bales.

Q. I hand you plaintiff's exhibit 15, and taking the close of the market the day before as the basis, what would have been the price at which you would have sold if you had executed literally that order?

A. It was impossible to execute this order.

Q. That is not what I asked you, Mr. Kehoe. What would have been the price if you would have sold out, had you executed literally that order?

A. Why, it would have been sold 1,000 bales at 17.20, 1,000 at 17.15, but there was no chance to sell it; the order was received on February 1st, before the market opened.

Q. What was the top of the market for the grade of cotton that you were purporting to carry for Mr. Browne on the first of February, 1917?

A. What was the highest price contract?

Q. Yes? A. Well, there were 300 at 17.13.

Q. At 17.13?

A. Yes.

Q. You sold within the first ten minutes after your Stock Exchange opened, did you not?

A. The Cotton Exchange.

Q. The Cotton Exchange, then? I say, you sold—

A. On the opening call, yes.

Q. Within the first ten minutes?

A. I presume so; I do not know just how long.

Q. You say you made settlement, part of it direct settlement and part of it ring settlement?

A. Yes.

Q. What proportion of the settlement you made was ring settlement?

A. Well, now, I cannot very well answer that, because, in the course of business, contracts are rung out and others are closed by direct settlement. We have no means of—

Q. No means of determining? A. Not very well.

Q. How many bales of cotton did you buy that day for May delivery?

A. How many what?

Q. How many bales of cotton did you buy that day for May delivery?

A. Well, I am not in a position to answer that ques-
122 tion right here; I have no records before me.
Q. Your records will show, will not they?
A. Yes, sir.
Q. Will you obtain that information for me? A. I will.

Mr. Johnson: The witness promises to obtain information and submit it later.

The Witness: That is, how many bales of cotton for May delivery were purchased by the firm of Thorn & Maginnis, or sold; I do not remember it.

By Mr. Andrews:
Q. Will you obtain for me, and give us evidence later, as to the number of bales you sold that day as well as those you purchased?
A. I will.
Q. You have no means by which you can determine the amount that was involved in what was known as ring settlements, and what was involved in what was known as direct settlement?
A. No, because those contracts are bought and sold through different brokers.
Q. I see.
A. But I am in a position to say that the full amount was paid out to brokers.
Q. By one means or the other? A. Yes.
Q. How long have you been doing business with Mr. Browne?
A. Since about September 22, I think.
Q. During that time had there been a single bale of cotton delivered on his contracts?
A. No, sir.
Q. All that he had ever done was strictly a marginal business, was it not?
A. Up to that time, yes, sir.
Q. How many bales of cotton had he contracted for through your firm on this marginal basis?
A. Well, I would have to look over the books.
Q. Will you kindly do that for me? A. I will.
Q. You tell me you cannot give me the information as to the number of bales of cotton for May delivery that was sold upon the New Orleans Cotton Exchange, of which you are a member, on the first of February, 1917?
A. I say I cannot do it offhand. The Cotton Exchange may have those records. I have never been called upon to answer this question before.

Q. How long have you been a member of the Cotton Exchange?

A. Since around December, I think, or January.

Q. Oh, approximately, Mr. Kehoe?

A. Around November or December or January, sometime.

Q. December and January of what year? A. 1916.

Q. 1916—December, 1916, or January, 1917?

A. Yes, sir.

Q. Were you a member of the Cotton Exchange during your dealings with Mr. Browne, prior to the first of the year, or was your firm, Thorn & Maginnis?

A. Yes, the firm was; I was not.

Q. Are there any members of your firm directors of the Cotton Exchange?

A. Directors?

Q. Yes, on the Board of Directors?

A. Yes, Mr. Thorn.

Q. Mr. Thorn is on the Board of Directors?

A. Yes, sir.

Q. How long has he been on that board, if you know?

123 A. Well, I think two years.

Q. Have you been able to ascertain the number of bales of cotton that you have handled for Mr. Browne since he has been trading with you?

A. Yes.

Q. What is the number?

A. 27,700. In reply to Mr. Andrew's request that I get certain information from the Cotton Exchange, as to the number of bales bought and sold each day, Mr. Plauche, the Assistant Secretary, informs me that they keep no record of that; that they only keep a record of the time and price; that there are so many sales and re-sales all day that they could not keep a record. As to the other question, as to the number of bales of spot cotton delivered in the month of May, if I understood it right, for the last five years, Mr. Plauche will look up the records and give me that information.

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The deposition of D. C. VILLARS was offered and read in evidence on behalf of the plaintiffs as follows:

Q. Mr. Villars, what position do you occupy, or hold, with the plaintiff, Thorn & Maginnis?

A. Cashier.

Q. How long have you held that position?

A. Since November 4, 1916.

Q. What are your duties in that position?

A. Well, the duties of a cashier; the duties to handle the cash and run the general ledger.

Q. State whether or not you draw checks for payments made by the firm, otherwise called disbursements? A. I do.

Q. And receive the cash received by the firm?

A. I do.

Q. I believe you say, in addition to that, you keep the General Ledger [off] the firm?

A. Yes, sir.

Q. Did you keep any statement of account, or any history of the transactions made by Fred Browne, the defendant in this case, through your firm, on your Ledger?

A. I did.

Q. What was the state of the defendant Browne's account on the afternoon of January 31, 1917, or just prior to the opening of the business on February 1st, 1917?

A. He had a ledger credit of $6760.00.

Q. What do you mean by "ledger credit", that he had that much money on deposit with your firm?

A. That he had that much money in the General Ledger, in his account.

Q. Did he have any open transactions with the firm at the time not yet completed? If so, what were they?

A. Well, I am not exactly in a position to answer that, as I am not supposed to know anything about the customers' transactions until they are given to me in a "close out"; but other than the cash, I do not handle the trades at all. I mean, in the customer's sheets or customer's ledger.

Q. You mean you do not handle the books of primary entry?

A. I do not.

Q. You only handle the final result of the transaction?

A. Yes, sir.

Q. As they appear in the ledger?

A. The only thing I do with the customer is to make
124 out the blotter.

Q. What do you mean by "blotter"?

A. Well, the blotter is a book that memoranda, as they come from the Exchange, are posted into.

Q. Who keeps that book? A. Mr. Leverich.

Q. Will you produce the statement showing the status of the defendant's account with the firm of Thorn & Maginnis as of the close of business on February 1st, 1917?

A. Yes, sir.

Q. Produce the paper you have. Is this paper which you have in your hand a true and correct statement as taken from

your books and the balance due your firm by Fred Browne, defendant, as of the close of business on February 1st, 1917?
A. It is.

Mr. Johnson: I introduce the paper in evidence, and ask that it be marked Plaintiff's Exhibit 38.

Said exhibit 38 being in words and figures as follows:

"Plaintiff's Ex. 38.

Account Current

New Orleans, La. May 29, 1917.

Mr. Fred Browne, Crowder, Okla.
In Account with
THORN & MAGINNIS,
209 Varieties Place.

| | Dr. | | | Cr. | |
|---|---|---|---|---|---|
| 1917 | | | 1917 | | |
| Feb 1 | To 20 May | 29,975 | Jan 31 | By Balance | 6,760. |
| | | | | Balance, | 23,215. |
| | | 29,975. | | | 29,975. |
| | Balance | 23,215." | | | |

Q. Will you produce the original entries made by you at the time of the transaction, for the inspection of counsel for the defendant?
A. I will.

By Mr. Andrews:
Q. Mr. Villars, where did you get that data from which these entries were made?
A. Those entries are made from the cash book and from the abstract—customer's abstract.
Q. The cash book and customer's abstract go to you, and you take as true what appears upon them and transcribe it upon this?
A. I do.
Q. You have no personal knowledge of the truth or falsity of any of the transactions that may appear upon this sheet that I hold, that you have handed to me, have you?
A. Why, in the cash book I have. I know that it is really true.
Q. You mean by that, that you know that a certain amount of cash has come to you purporting to be the cash received from or belonging to a certain customer?
A. I do.
Q. But that belief of yours is originally had from the abstract and cash book that you have before mentioned?

A. It is, yes.

By Mr. Johnson:

Q. I understood you to say that you handle the cash?

A. I do.

Q. So, such items upon this original paper that you produce, as are marked "cash" are within your personal knowledge?

A. Yes.

Q. This sheet which you have produced has been taken from the loose leaf ledger, I understand?

A. Yes, sir.

125 Q. That was the original book? A. Yes, sir.

Q. And this is the original sheet? A. Yes, sir.

Q. Plaintiff's Exhibit 38 which you have identified, discloses a debit against the defendant, Browne, as of February 1st, 1917, of $29,975.00, as the result of a transaction in twenty contracts for May delivery. Take the sheet and tell the court and the jury [hos] much of that sum was paid out, if anything, by Thorn & Maginnis, on these transactions, and how much, if anything, is a charge for services rendered in the purchase or sale of those twenty May's?

Mr. McDonough: That is objected to for this reason: The witness has just previously stated that he did not handle the transactions himself and hence he could not have the knowledge. This calls for a conclusion; it involves all the transactions.

The Court: I cannot tell from that whether the witness was requested to just explain the sheet, or to state something with reference to his personal knowledge. I recall his testimony preceding that he disclaimed any personal knowledge of anything except the cash that was on hand that was shown by the books; of the other transactions he had no personal knowledge. Now then on what ground do you claim that this ought to go in?

Mr. Oglesby: On the ground that this is simply the amount shown by the books as due Thorn & Maginnis from Browne, as shown by the books themselves.

The Court: Well, he is not asked that. I understood that he was asked to state from that sheet. He didn't have the ledger before him, according to that?

Mr. Oglesby: He was asked: This sheet which you have produced has been taken from the loose leaf ledger?

A. Yes, sir.

The Court: On what ground do you contend that his statement with reference to that is competent, in view of his statement that he had no personal knowledge of anything except the amount of cash as shown by those books. Don't the sheet show what the books show?

Mr. Oglesby: Yes.

126 The Court: Very well, then what was the necessity for his explanation?

Mr. Oglesby: No real necessity.

The Court: Then you don't insist on it?

Mr. Oglesby: No, we don't insist on it.

Q. Well, they did not pay out the commissions, did they?
A. Well, no; they really paid out $29,675.00.

Mr. McDonough: I object to the answer to that; he is stating a conclusion.

The Court: He is simply stating what he sees on the face of the statement. I think that is competent.

Mr. McDonough: I save an exception.

The Court: I think it is perfectly apparent that he is simply pointing to something on the statement.

Q. $300.00 of the sum that is debited to them on that item is for services rendered, or commissions? A. Yes, sir.
Q. What is the commission on 2,000 bales of cotton, for purchasing and selling 2,000 bales of cotton?
A. $300.00 for a non-member and $150.00 for a member.
Q. Do you know whether or not the defendant, Brown, was a member of the New Orleans Cotton Exchange?
A. Well, I have no knowledge of anything like that; in fact, I am not supposed to know.
Q. Did you, or did you not, pay out the sum of $29,675.00 for the account of Mr. Browne, in and about these twenty contracts for May cotton?

Mr. McDonough: Same objection to that.

The Court: Overruled and exception noted.

A. I did.
Q. To whom were the payments made?
A. To various brokers.
Q. Are you prepared, absolutely, to testify that the sum of $29,675.00 was paid out for the account of Mr. Browne as

the result of these purchases and sales of twenty contracts of May cotton? A. I am.

Q. Did the firm of Thorn & Maginnis receive any part of the debit other than their commission? Did they receive any part of the money deposited with them by Mr. Browne other than their commission?

Mr. McDonough: The same objection.

The Court: Overruled and exception noted.

A. Of what amount?

Q. Of any amount deposited by Mr. Browne, at any time?

127 Mr. McDonough: Same objection.

The Court: Overruled and exception noted.

A. They did not.

Q. Were the amounts that Thorn & Maginnis had debited the account of Mr. Browne with since the inauguration of the account in September, 1916, so far as your knowledge extends, as I understand that you took employment on November 4th, 1916,—did they pay out those debits to other brokers of the New Orleans Cotton Exchange except insofar as the debit may include the commisison?

A. I never quite got that.

Q. I will explain. At various times during the history of the transactions, it appears upon the original ledger sheet which you have submitted for our inspection, that Mr. Browne has been debited with various items, such as, for instance, on October 31st, 4 July 380; again on November 10, which should bring it within your purview, 4 January, 435. Now, what I desire to know is, did the firm of Thorn & Maginnis actually pay out these sums of money to other and various brokers of the New Orleans Cotton Exchange, except such part of this debit as may be commissions?

A. They paid out the sum that was arrived at through the regular transactions without considering the commissions—an actual debit without considering the commissions.

Q. Well, these debits, as I understand, include the commissions on these four July's, or four January's, as the case may be? In other words, every debit item includes the commission, does it not? A. It does.

Q. Then State whether or not Thorn & Maginnis, during the term of your employment, actually paid out to other brokers, all the sums which they have debited to Brown, except so much thereof as may be commissions? A. They did.

Cross-Examination

Read by Mr. McDonough:

Mr. Andrews:

Q. Mr. Villars, this sheet that you have submitted for our inspection begins with what date?

A. September 22, 1916.

Q. Did you, personally, make all these entries?

A. I did not make all of the entries.

Q. This paper that has been tendered in evidence marked plaintiff's Exhibit 38, contains merely a resume of the various items of this sheet which you have exhibited, does not it?

A. It does not show all the items.

Q. I say it contains merely a resume of them—a general balance of the items, does not it? A. Yes.

Q. You have testified that those sums of money were paid out. Don't you know that it is true that a large portion of these settlements were made as ring settlements between brokers? A. What settlements?

Q. The settlements in which this money was supposed to have been made on contracts?

Mr. Johnson: That is admitted, that a considerable proportion of it was paid out by ring settlements.

128 By Mr. Andrews:

Q. That being admitted as true, you were somewhat in error in saying that Thorn & Maginnis had paid actual cash to the extent of twenty nine thousand and some odd dollars, were not you?

A. I was not; they never paid $29,975.00.

Q. Your balance here shows $29,975.00 debit balance?

A. It does not show a debit balance of $29,975.00.

Q. Well, does it show a loss of $29,975.00 on the first day of February, 1917? A. It does.

Q. Now you testified that had been paid to various brokers in cash, did you not? A. Not that amount.

Q. What amount had been paid? A. $29,675.00.

Q. Oh, I see, you are deducting the $300.00? A. Yes, sir.

Q. I stand corrected to the extent of $300.00, but, if a large portion of this was paid in ring settlements, you still are in error in saying that that much actual cash has been paid, were you not, Mr. Villars? A. I was not in error.

Q. These ring settlements indicate a payment of actual cash?

A. It does, in the natural course of business.

Q. I am not talking about natural course of business; I am talking about hard cold dollars and cents. You carry it as a payment on your books, but it does not mean an actual passing of money, does it? A. It does.

Q. It does? You testify to that? A. It does.

Q. You are as sure of that as you are of any other statement you have made here? A. I am.

By Mr. Johnson:

Q. You were asked by Mr. Andrews if Plaintiff's Exhibit 38 was not only a resume of the amount that Mr. Browne owed. I will ask you to state whether or not it contains a debit item showing loss upon two thousand bales of cotton for May delivery? A. It does show a debit loss.

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The deposition of SAMUEL CAREY COLEMAN was offered and read in evidence on behalf of the plaintiffs as follows:

Direct Examination read by Mr. Going.

By Mr. Johnson:

Q. Mr. Coleman, are you one of the plaintiffs in this case?

A. I am.

Q. Of what state are you a citizen and resident?

A. Louisiana.

Q. Are you a partner in the firm of Thorn & Maginnis?

A. I am.

Q. For how long have you been a partner?

A. Since November 1st, 1915.

Q. How long have you been connected with the cotton business? A. Since December, 1903.

Q. State whether or not you buy and sell cotton across the ring in the New Orleans Cotton Exchange? A. I do.

Q. Are you a member of the New Orleans Cotton Exchange? A. I am.

Q. How are transactions made on the floor or ring of the New Orleans Cotton Exchange?

129 A. By open outcry.

Q. Are any transactions made secretly across the ring on the floor? A. No.

Q. Are the bids made openly there?

A. That is all provided by the rules of the New Orleans Cotton Exchange?

Q. Refresh your recollection if necessary from whatever memoranda you may have with you, and state whether or not on January 25th, you purchased for the account of the defendant, Browne, 200 bales of cotton for delivery in May, and 400

bales of cotton for delivery in May, the first 200 being at 16.83 and the 400 bales being at 16.84, and from whom you purchased it?

Mr. McDonough: I object to that answer on the ground that the contracts show for themselves and they have already been introduced, and that these contracts are not in compliance with the United States Cotton Futures act; raising the same question that I tried to raise yesterday, that is, that these contracts speak for themselves. The only different objection now is that the contracts are already in evidence and they speak for themselves.

Mr. Cravens: The first part of the objection has been ruled on. The latter part of it is that he is stating that he bought these himself.

The Court: Overruled and exception noted.

A. The records show that. I bought 100 from Hayward Howard & Company, at 16.83, 100 from C. P. Ellis & Company, at 16.83; 300 from Silvan Newburger & Company at 16.84 and 100 from C. P. Ellis & Company at 16.84.

Q. Do you recall what broker represented C. P. Ellis and Hayward Howard & Company and Silvan Newburger & Company on that date?

A. No; I can tell you about who usually handles their business.

Q. Was it some member that you knew? A. Yes, sir.

Q. That represented these firms? A. Yes, sir.

Q. Did you, on January 27th, purchase for the account of the defendant, Fred Browne, 200 bales of cotton on the New Orleans Cotton Exchange floor, at 17.06 per pound?

A. Yes, sir.

Q. And from whom did you purchase it?

Mr. McDonough: I think probably I saved the question on yesterday, but the point is this is objected to on the further ground that these contracts do not show the seller of that cotton, the name of the seller of that cotton; they only
130 show the brokers, nor do they show Mr. Browne's name, or the man Mr. Browne is supposed to have bought from through his broker.

The Court: Overruled and exception noted.

A. Yes, sir; Harrison & Lawrence, 100 bales; Pinckard & Kennedy, 100 bales.

Q. How do you know these transactions, about which you have just testified, were for the account of Fred Browne?

Mr. McDonough: The same objection to that.

The Court: Overruled and exception noted.

A. Well, they were purchased on direct orders or telegrams from Mr. Fred Browne.

Q. Did you see the telegrams? A. I did, sir.

Q. Did you make any notations upon the telegrams?

A. I might or I might not have; if the telegrams are there, I can tell you.

Q. Take plaintiff's Exhibit 1, and state whether or not you made any notation upon that telegram? A. I did, sir.

Q. What was it? A. 84.

Q. What did the figure "84" indicate?

A. Indicated the price at which we bought them. The "full" is written after. I mean by that, the full price.

Q. That was the fraction?

A. That was the fraction; that is the idea.

Q. Take Plaintiff's Exhibit 3, and say whether or not you made any notation upon that telegram? A. Yes, 83.

Q. Does the same explanation apply to that in regard to the full price? A. Yes, sir.

Q. What did the "83" mean?

A. The fractional part of the price.

Q. What was the full price?

A. 16.83, I think.

Q. Don't come with "I think".

A. 16.83 on January 25th.

Q. Take plaintiff's exhibit 5, and say whether or not you made any notation upon that telegram, and if so, say what it is?

A. "06" indicating 17.06 as the purchase price of 200 bales bought for May delivery on January 27th.

Q. State whether or not on January 29th, you purchased any cotton for the account of Fred Browne, the defendant, and if so, how many bales and from whom purchased and where?

Mr. McDonough: The same objection urged to that as heretofore, as to the United States Cotton Futures act, and also the same objection based upon the telegram, the stop loss order of Mr. Browne of yesterday.

The Court: Objection is overruled. As I understand
131 your objection, so far as the stop loss order, is that it could not be added to or subtracted from, in connection with the testimony offered with reference to the custom.

Mr. McDonough: That is true, Your Honor, that it did not authorize the sale at 14 cents, and it was therefore in-

competent, that there being no evidence that Browne understood any such custom, it is inadmissible.

The Court: Objection overruled and exception noted.

A. On January 29th, I bought 400 bales of cotton for delivery in May, at 17.08 from H. & B. Beer.

Q. Did you buy any more on that day?

Mr. McDonough: The same objection.

The Court: Overruled and exception noted.

A. I bought 300 at 16.88.

Q. From whom?

A. I bought 100 from H. D. Cothran & Company and 200 from Messrs. Pinckard & Kennedy.

Q. Where were those purchases made?

A. On the floor of the New Orleans Cotton Exchange.

Q. By what method? A. Open outery.

Q. Did you purchase for the defendant Browne, on January 30th, 1917, any cotton? If so, how much, from whom and where?

Mr. McDonough: The same objection.

The Court: Overruled and exception noted.

A. On January 30th, I bought 200 bales of cotton for delivery in May, at 16.93, and made the purchase from Messrs. John F. Clark & Company.

Q. You said "from"?

A. Yes, I made the purchase, or bought them, from John F. Clark & Company. They sold it.

Q. Did you purchase any cotton for the defendant, Browne, on January 31st, 1917; if so, how much, from whom and where?

A. On January 31st, I bought 300 bales of cotton for delivery in May, at 17.13. I bought 100 from Messrs. Felix Couturie & Company and 200 from Messrs. Shepard & Gluck.

Q. Where did you buy them?

A. On the floor of the New Orleans Cotton Exchange.

Q. By what method? A. Open outery.

Q. Take plaintiff's exhibit 7, which I now hand you, and state whether or not you made any notation upon it, and if so, explain the notation?

A. I made a notation on here "08" indicating the fractional part of the purchase price, which was 17.08 for 400 bales for delivery in May.

Q. How do you know that that cotton was intended for Mr. Browne?

A. It was bought on his direct telegraphic instructions.

Q. Did you see the telegram? A. I did, sir.

132 Q. Take Plaintiff's Exhibit 9, which I now hand you, and state whether or not you made any notation on it, and if so, explain the notation?

A. I made the notation of "88" on there, which is the fractional part of the price; the full price was 16.88; it was for the purchase of 300 bales of cotton for delivery in May, 1917.

Q. That is the original telegram handed to you on the floor of the New Orleans Cotton Exchange? A. Yes, sir.

Q. Take plaintiff's exhibit 11, which I now hand, you, and state whether or not any notation was made thereon; if so, if made by you, or by another, explain the notation?

A. There is a notation made by me on there of "93".

Q. On which side of the telegram?

A. The reverse showing the purchase price, in fraction, of 200 bales of cotton for delivery in May, 1917; the full price of which is 16.93.

Q. Take Plaintiff's Exhibit 13, which I now hand you, and state whether or not there is any notation upon the telegram, and if so, who made the notation, and if made by you, explain the notation?

A. There is a notation of "13" on here, indicating the fractional price; the full price of which is 17.13, for the purchase of 300 bales of cotton for delivery in May, 1917. The notation was made by myself.

Q. Did you sell any cotton for Mr. Browne on February 1st, 1917.

Mr. McDonough: The same objection is made to that Your Honor, as made heretofore.

The Court: Overruled and exception noted.

A. I did, sir.

Q. How many bales?

Mr. McDonough: It is understood that that objection goes to all of that transaction. It is the transaction relating to the supposed sale of that 2,000 bales; the same objection not in compliance with the Cotton Futures Act, and the same objection on account of being no names of buyers or sellers, being the names only of the brokers, and there being an absence of one of the slips, only one of the slips having heretofore been offered in evidence.

The Court: Overruled and exception noted.

A. Two thousand bales.
Q. Where was the sale made?
A. On the floor of the New Orleans Cotton Exchange.
Q. To whom did you sell it?
A. Messrs. Airey & Stouse.

Mr. McDonough: The same objection as to that.

133 The Court: Overruled and exception noted.

Q. At what price? A. Fourteen cents.
Q. Do you remember what broker represented Airey & Stouse? A. H. J. Stouse.
Q. Do you know the defendant Browne? A. I do not.
Q. Has the defendant Browne, ever by letter or by any other means, communicated to you any purpose not to take the delivery of these transactions? A. He has not.
Q. I believe you state that you did not and do not now know the defendant, Browne? A. That is correct
Q. Did you ever have any conversation with him?
A. Never.
Q. So far as you know, had any member of your firm, or any employee of your firm, ever had any communication with Mr. Browne, in person, prior to the last transaction made with him by your firm? A. None.
Q. What, if you know, occasioned this severe decline in the price of cotton on February 1st, 1917? In the first place, I should ask you was there a decline from the previous day's prices? A. There was.
Q. What did the cotton market open at? What did the May delivery open at on the New Orleans Cotton Exchange, if you know, on February 1st?
A. My recollection is that the first price was 14.50.
Q. What did the market then do, after opening?
A. Declined to 13 cents after selling at, my recollection is, 14 cents, which was the next price, and then several prices between 14 and 13 cents.
Q. You were there and saw those prices made?
A. I certainly was.
Q. How many sales were made at 14.50, do you know?
A. Oh, I could not say, no.
Q. Well, were there many?
A. I could not say that; I doubt if there were many.
Q. What was the next price after selling at 14.50?
A. 14 cents is my recollection.

Q. Have you any means of refreshing your recollection whereby you can make your testimony more positive?

A. I might by referring to the records of the Cotton Exchange.

Q. Will you refer to the records of the Cotton Exchange, having regard to the history of prices upon that date, and make your answer as positive as possible? A. I will.

Q. You will understand that what I desire is to know whether or not any cotton was sold between the price of 14.50 and 14 cents? A. I do.

Q. State whether or not the price that you obtained for these 2,000 bales of cotton on February 1st, was the best possible price that offered at that time? A. It was.

Cross-Examination read by Mr. McDonough.

By Mr. Andrews:

Q. Who are the members of the firm of Airey & Stouse?

A. Thos. L. Airey and Henry J. Stouse; Mr. Joseph A. Airey, in commendam.

134 Q. Mr. Coleman, you have testified relative to the price of cotton below 14.50 on the first of February, 1917? A. Yes, sir.

Q. Isn't it true that May deliveries reached a price better than 17 cents on the same day?

A. Not on the New Orleans market, no, sir.

Q. Are you sure that no price of that kind was paid on that day? A. In the New Orleans market?

Q. Yes? A. Absolutely sure.

Q. What was the best price within your recollection?

A. May, I think was 16.10; that was the highest price reached that day.

Q. Are you sure of that?

A. Well, I am not absolutely sure of that, but I am absolutely sure that it was within three points, one way or the other.

Q. In the dealings of cotton that day, how many bales of May delivery were sold, do you know?

A. There is absolutely no way of finding that out, Mr. Andrews.

Q. Is it not true that the Cotton Exchange contracts between members are recorded? A. Yes, sir.

Q. Are those records not in existence? A. Yes, sir.

Q. Could not you determine from those records?

A. No, sir.

Q. Is it true that your records do not speak the truth?

A. Surely they speak the truth.

Q. If your records do speak the truth, you, as a member, have access to them, have not you? A. Surely.

Q. And you say records of the transactions are kept?

A. In 100 bale lots.

Q. All right. A. 100 bale lots make the price.

Q. They are kept that way? A. Yes, sir.

Q. And yet, you cannot give me the total of bales that were sold upon that day? A. No, sir.

Q. For May delivery? A. No, sir.

Q. How long have you been in the Cotton Exchange here?

A. As a member of the Cotton Exchange?

Q. Yes. A. I think since about 1906 or 1907.

Q. Can you give me the average number of bales of spot cotton sold in New Orleans cotton market here during the last five years? A. Not offhand.

Q. Have you any means by which you can determine it?

A. The records of the exchange, surely.

Q. Will you obtain that for me? A. I certainly will, yes.

Q. You will obtain that for me?

A. The number of bales of spot cotton sold here daily for the last five years?

Q. No, the average number per year?

A. Well, I cannot give the bales.

Q. Of spot cotton delivered?

A. Oh, delivered on contracts?

Q. Yes. A. Sure.

Q. You will kindly get that for me?

A. Yes, starting from when?

Q. 1912 or 1911; something like that. A. Yes, sir.

135 Q. How many bales of cotton has your house handled for Mr. Browne, do you know, or in all ?

A. I can show it.

Q. How many bales of cotton have been delivered to him, or delivered by him through you to other purchasers during the time that he has been dealing with you? A. None.

Q. If your [records] show a total of something more than 27,000 bales, no one of those 27,000 bales has ever been delivered upon any contract made through you in his behalf, either for sale or purchase?

A. No cotton has ever been received or delivered by Mr. Browne through us.

Q. You were testifying a moment ago relative to some notations that appeared upon some exhibits that have been offered in evidence. Have you any independent recollection of the notations, themselves, outside of the fact that they appear upon these instruments that were tendered to you?

A. I recognize my own handwriting.
Q. That is all that you do? A. Yes.
Q. You have no independent recollection of those transactions? A. No, sir; my own handwriting I know.
Q. That is the thing you are testifying from? A. Yes, sir.

Mr. Johnson: I did not understand him to say that he has no recollection of the transactions.

The Witness: No, don't misunderstand me at all. When you are trading in lots of cotton, day in and day out, one individual transaction may not occur to you, but the fact that my price mark is on there indicates that I handled that telegram.

By Mr. Andrews:
Q. That is just what I am getting at. That is what you base your testimony from—the fact that there is something on there that you recognize as your handwriting?
A. Yes, sir.
Q. About how many transactions do you handle a day?
A. It varies.
Q. Give me an estimate of about the amount?
A. That is impossible.
Q. Have you no idea at all of the minimum or maximum limits of approach?
A. No. Some days it will go as low as 100 bales, and some days as high as 7500 or 10,000 bales, depending.
Q. About how many transactions did you handle on the first of February, 1917? A. Oh, I cannot say offhand.
Q. Give me your best judgment? A. I could find out.
Q. Will you do that for me?
A. Sure. You want the number of bales that we handled on February 1st?
Q. Yes? A. Yes, sir.
Q. Will you kindly try to find for me the number of bales you bought as well as the number of bales you sold upon that day? A. I will try, yes, sir.
Q. You can do that for me, can't you?
A. I don't know whether I can or not, but I will try.
Q. You really will try for me? A. Yes.

By Mr. Johnson:
Q. These prices, as I understand, the Exchange keeps
136 no record of transactions except the prices made?
A. The prices and time; 100 bales make a transaction.

The deposition of HENRY G. HESTER was offered and read in evidence on behalf of the plaintiffs:

Direct Examination read by Mr. Oglesby.

By Mr. Johnson:

Q. Colonel Hester, what position do you hold with the New Orleans Cotton Exchange?

A. Secretary and Superintendent.

Q. How long have you held that position?

A. About forty-seven years.

Q. Do you keep the records—the rules and regulations passed by the Exchange? Are they in your charge?

A. Yes; we keep all the records.

Q. You are the keeper of those records? A. Yes, sir.

Q. Will you be so good as to produce the rules and regulations of the New Orleans Cotton Exchange which were in force between January 25th, 1917, and February 1st, 1917?

A. All right, sir. (Witness produces the rules and regulations of the New Orleans Cotton Exchange, in the form of a book entitled "Charter, Constitution, By-Laws and Rules of the New Orleans Cotton Exchange, 1915".)

Q. This book which you produce includes all amendments to date? A. Yes, sir.

Mr. Johnson: I offer in evidence the book produced by Mr. Hester, and ask that it be marked Plaintiff's Exhibit A, and that no copy be made of it.

Mr. McDonough: Now the defendant makes the following objections to these regulations: 1. Section 3 of the Rules of the New Orleans Cotton Exchange permit verbal contracts. The Treasury regulations made in pursuance of the United States Cotton Futures Act in article 6, prohibit any rule, by-law, custom or agreement or understanding which in any way impairs the right of the person obligated to deliver cotton to tender any cotton which is of or within the grades, of the quality and of the length of staple deliverable under a [contrace] made in compliance with section 5, section A or section 10 of the said act. I am stating two objections in one. The first is that under the Cotton Futures Act and under the Treasury regulations there can be no verbal contract. The Treasury regulations provide that there shall be no rule or regulation or custom of any kind on any Cotton Exchange that
137 conflicts with the Cotton Futures Act. Therefore, Section 3 in permitting verbal contracts is in violation of the Treasury Regulations, as well as in violation of the Cotton Futures Act and therefore these regulations are inadmissible.

The Court: Before you pass from that point, in substance, your objection is that a certain regulation of the Cotton Exchange authorizes verbal contracts?

Mr. McDonough: Yes, sir.

The Court: And you say that the Cotton Futures Act of Congress prohibits such contracts?

Mr. McDonough: Yes, sir.

The Court: Now let me get just how you mean to apply that: Are you objecting to all of the rules and regulations of the Cotton Exchange on that account?

Mr. McDonough: I do, especially Your Honor, for the reason that there is not a word there permitting a verbal contract, hence that being a rule, the entire structure of the regulations fall because it is in conflict with the Cotton Futures Act and in conflict with the Treasury regulation, and there being no probative evidence in this case that the tax of 2 cents per pound was paid, it would necessarily follow, as I view the law, that the whole transaction is criminally illegal and therefore there could not be a recovery.

Now, I have a further objection to the introduction of these regulations. Under section 2 of these regulations a contract is provided for. Under section 1, in order to call the Court's attention to my objection I have to read that rule. No contract for the future delivery of cotton shall be noticed, in any public report or printed circular, or in any manner recognized, acknowledged or enforced by the Exchange or any Committee or officer thereof, unless parties thereto shall be full
[mambers] of the New Orleans Cotton Exchange; it
138 being provided, however, that where contracts are
[ussyed] by firms composed of two or more partners, at least two of said partners shall be full members of said Exchange. Sec. 2. The following form of contract shall apply to all contracts entered into on and after February 18, 1915. Then the form of the contract is set out. There is no evidence up to this time that any such contract was entered into in this case, hence there being no testimony here that the contracts offered in evidence complied with the rules and regulations and by-laws, the rules and by-laws are themselves inadmissible. I may be mistaken on that objection. I simply call the court's attention to it because it will arise in the case later; because these rules and regulations prescribe the form of contract, and as I view the matter, that is not complied with.

The Court: Well, don't you understand—or is it your understanding that those identical questions were passed on by the Court of Appeals?

Mr. McDonough: No, I don't, your Honor. I don't think the Court of Appeals considered the question of the verbal contract.

The Court: What did they consider?

Mr. McDonough: They considered only the admissibility of the evidence, of the sold broker's slips.

The Court: They considered also the effect of the statutes of the United States, didn't they?

Mr. McDonough: They did. As I view the decision, it is only this. In the court below all of these slips were excluded, which excluded the transaction because in violation of the Cotton Futures Act. Now the court of Appeals reversed it on the ground holding that that testimony was admissible, and as I view it, it is the only thing that has been decided in
139 this case, except they did decide another question which relates to a gaming contract, holding that that was an issue for a jury. But they did not rule upon, as I view it, the question of these regulations being admissible because of their authorizing a verbal contract. That is the thing that I am resting on now. That is the thing that I am calling the Court's attention to, that there being a provision in these by-laws that verbal contracts may be made, they are inadmissible. Then the further objection Your Honor is that—and these are the only two that I want to urge upon the Court at this time—the other objection is this: I will try to make it clear. That the by-laws and regulations are themselves in violation of the United States Cotton Futures Act for the reason that no outside can make a valid contract, because Mr. Browne's vendor when he bought is not a member of the Cotton Exchange and the Cotton Exchange has no power over him by the very articles in the Cotton Exchange themselves. Rules and by-laws are provided for adjusting its controversies between the members and they do not pretend to have any jurisdiction over outside parties. Then it is an evasion of the United States Cotton Futures Act because it permits a verbal contract without paying the revenue.

The Court: I think that was all gone over in the other case, and that was the court's view of it at that time. I think

the court stated that it must have been the view of Congress. Now, the Appellate Court, which has authority over this court, has said that was wrong. Now I don't see any other application to be made of that act except such as the court made at that time. The objection is overruled.

Mr. McDonough: Save an exception.

(Plaintiff's Exhibit A.)

EXTRACT FROM THE MINUTES

OF THE

BOARD OF DIRECTORS

OF

THE NEW ORLEANS COTTON EXCHANGE.

JANUARY 12TH, 1916.

*Resolved*, That the report of the Committee on Rules embodying a compilation and codification of the Charter, Constitution, By-Laws and Rules of this Exchange to December 31st, 1915, as presented to this Board in printed form, be and is hereby approved;

*Resolved*, That the Rules as expressed and enumerated in said report be and are hereby adopted and promulgated, together with the Charter, Constitution and By-Laws as submitted.

W. P. STEWART, *President*.

HENRY G. HESTER, *Secretary*.

# CONTENTS


CHARTER. . . . . 1– 7

CONSTITUTION. . . . . 11– 15

BY-LAWS. . . . . 19– 31

SPOT RULES . . . . . 35 –43

FREE ON BOARD RULES. . . . . 47– 59

FUTURE RULES . . . . . 63–132

COTTON SEED AND COTTON SEED PRODUCTS. . 135–145

GENERAL RULES. . . . . 149–157

RULES OF ORDER. . . . . 161–163

PRESS SUPERVISION . . . . . 167–173

LEVEE INSPECTION . . . . . 178–181

STANDARD OF COMPRESSING AND INSPECTION OF COTTON FOR EXPORT. . . . . 185–187

APPENDIX—UNITED STATES COTTON FUTURES ACT . . . . . I–XI

**Admission** of Members—Constitution, Article V..... 12

**Amendment** of By-Laws—Constitution, Article X..... 15
of Charter—Charter, Article VIII..... 6
of Constitution—Constitution, Article X..... 15
of Rules—By-Laws, Article IV..... 22

**Annual Dues**—Constitution, Article VI, By-Laws, Article XVI, General Rules 2-6 .....12–28–29–150

**Annual Elections**—By-Laws, Article I..... 19
Charter, Article VI..... 4
Constitution, Article III..... 12
Members in arrears cannot vote—Constitution, ArticleVI and General Rule 3..... 13–149

**Annual Reports**—By-Laws, Article III..... 21

**Appeals**—Classification of Cotton, on F. O. B., Rule 21, Sec. 2.... 55
Committee of, By-Laws, Articles III-X.....21–24–25
Committee on Classification (Inspection), Future Rules 5-10; General Rule 13.....–68–72–73–153
Decisions of Appeal Committee on Classification, Future Rule 13, Sec. 6..... 78
Duties of Appeal Committee on Valuation, Future Rule 14, Sec. 12 ..... 79
Failed Members' right to appeal, Future Rule 62..... 130
Free on Board—Appeals Arbitration decisions, F. O. B. Rule 21. . . . . 55–156
From Decision Board of Classers, Future Rules 5-10.....68–72–73
From Decision Committee on Valuation, Future Rule 14, Secs. 11-12. . . . . 79
General Appeal Committee, General Rule 13, Sec. 3..... 154
Limit of time for, By-Laws, Article XIV, Future Rule 16, Sec. 8. . . . . 27–28
On claims arising from Spot Sales, Spot Rule 19..... 43
On fines instituted on Calls, Rules of Order 10..... 163
Purpose and duties of Committee of, By-Laws, Article X.. 24
Rejections, no appeal on (Inspection), Future Rule 18.... 86
Samples to be used, Future Rule 16, Sec. 6..... 83

**Applications—For Membership**, Constitution, Articles IV-V.... 12
By-Laws, Articles V-XII..... 22–26
General Rules 12..... 151–152
For Visiting Membership—Constitution, Article IV, Sec. 2, General Rules 12.....12–151–152
Of parties engaged in handling cotton, Future Rule 4..... 67–68

**Arbitration**—Arbitrators, Appeal from decision of, By-Laws, Article IX ..... 24
Duties of, By-Laws, Article IX..... 24
Fees of, By-Laws, Article IX..... 24
How appointed, By-Laws, Article III.. 21
Committee—By-Laws, Articles III-IX..... 21–24
Cotton Seed and Cotton Seed Products..... 135–136
Decisions Binding, By-Laws, Article IX..... 24
Failed Members, right to arbitrate, Future Rule 61..... 129
Free on Board, Arbitrations on disputes, F. O. B. Rule 21.. 55–56
Guaranteed Through Cotton, F. O. B. Rule 36..... 60
Settlement of claims of members, By-Laws, Article XIV.. 27

**Assessments**—Constitution, Article VI..... 13
General Rules 2 ..... 149

Of settlements by grade differences, Future Rules 15, Sec. 2 ..... 81
Rules of Order 2-6-7 ..... 161-162
**Attorney, Powers of** (See Powers of Attorney).
**Average Prices**—Compensation for Grades on Average Prices, Spot Rule 6 ..... 38
How computed, Future Rule 65 ..... 131
Settlement in case of failure of margin depository, Future Rule 53, Sec. 2 ..... 124
**Bagging**—Amount used to cover bales, Spot Rule 9 ..... 39
Excess, how ascertained, Spot Rule 9 ..... 39-40
Unmerchantable, Spot Rule 10 ..... 40
**Balloting**—On election of officers, By-Laws, Article XIII ..... 26
On officers (Annual election), Charter, Article VI ..... 4-5
**Bands**—(See also ties and standard of compressing). and By-Laws, Article 1 25-26
Cutting for Sampling Supervision, Rule 8 ..... 170
Removed for inspection, Future Rule 13, Sec 4 ..... 75
**Betting**—Rules of Order 9 ..... 162
**Bills**—Invoice for Spot Cotton, Spot Rule 3 ..... 35-36
For Classing and Inspecting, Future Rule 29 ..... 100
On ring settlements, Future Rule 50, Sec. 2 ..... 121
Penalty for failure to pay, Future Rule 29, Sec 2 ..... 100
Payment of, Future Rule 27 ..... 97-98
When rendered, Future Rule 22, Sec. 5 ..... 91-92
**Board of Classers**—Arbitrations by, on deliveries other than future contracts, Future Rule 35 ..... 105
Duties of, Futures Rules, 8, 14, 16, Sec. 5 ..... 70-71-77-83
How appointed, Future Rule 5 ..... 68
**Board of Directors**—Absence of President and Vice President, By-Laws, Article III ..... 21
Amendments of Rules, By-Laws, Article IV ..... 22
Annual Report, By-Laws, Article III, Sec. 3 ..... 21
Appointment of Nominating Committee, By-Laws, Article I, Sec. 4 ..... 29-30
Standing and other committees, By-Laws, Article III, Future Rule 54 ..... 21-125
Secretary, By-Laws, Article III ..... 21
Other employees, By-Laws, Article III ..... 21
Committee to carry out certification rules, Future Rule 5 ..... 68
Inspector-in-Chief, Future Rule 7, Sec. 1 ..... 69-70
Acting Chairman, Committee on Supervision and Deliveries, Future Rule 21 ..... 88
Inspectors of Election, Charter, Article VI, By-Laws, Article I ..... 4-19
Board of Classers, Future Rule 8, Sec. 1 ..... 70
Clerk, Board of Classers, Future Rule 9 ..... 71
Assistant Inspectors, Future Rules 4-7, Sec. 1 ..... 67-69-70
Weighers, Future Rule 4 ..... 67
Licensed Warehouses, Future Rule 4 ..... 67
Chief Supervisor and Assistants, Press Supervision Rules 1 and 2 ..... 167-168
Chief Levee Inspector and Assistants, Levee Inspection Rules 1 and 2 ..... 177-178

Approval of Applications for Membership, Constitution, Article 5. . . . . 12
Balloting for, By-Laws, Article I. . . . . 19
Charter, Provisions, Article VI. . . . . 4–5
Classers, additional, Future Rule 8, Sec. 4. . . . . 71
Commissions, Committee's Decision, General Rule 13. . . . . 153
Calls, Hours of, Future Rule 48. . . . . 112
Closing of Exchange, By-Laws, Article II, Future Rule 40, Sec. 3. . . . . 20–107
Declare memberships at an end, Constitution, Article VI, Sec. 2; Future Rule 62. . . . . 13–129–130
Dues and Assessments unpaid, Constitution, Article VI; General Rule 2. . . . . 13–149
Election of, Charter, Article VI; Constitution, Article III; By-Laws, Article I. . . . . 4–5–12–19
Failure to elect, By-Laws, Article I. . . . . 19
Failed Member, disqualified for re-instatement, Future Rule 63. . . . . 130–131
Failed Member, member not filing claim against, Future Rule 58. . . . . 127–128
Failed Member, re-instatement of, Future Rule 64. . . . . 131
Fines and fees unpaid, Constitution, Article VI; General Rule 2. . . . . 13–49
Inspection, Classification, etc., charge for, Future Rule 29 99
Inspectors of Election, Charter, Article VI; By-Laws, Article I. . . . . 4–19
Levee Inspectors, and Chief, Levee Inspection Rule 1. . . . 177
Licenses, Future Rule 4. . . . . .67
Meetings, By-Laws, Article II. . . . . 20
Powers of Attorney to visit Exchange and trade. . . . . 188
Power of Attorney, form of, By-Laws, Article XVI; Future Rule 56. . . . . 28–125
Proxies to vote for, Charter, Article VI. . . . . 5
Opening and Closing, By-Laws, Article II, Sec. 3, and Future Rule 40, Sec. 3. . . . . 20–107
Nominating Committee, cannot serve on, By-Laws, Article I, Sec. 4. . . . . 19–20
Misconduct, Article VIII, Constitution; By-Laws, Article 15. . . . . 14–28
Rules, Adoption of, By-Laws, Article IV. . . . . 22
Salary of Secretary of Committee on Supervision and Deliveries, Future Rule 7. . . . . 70
" of Board of Classers and clerk of, Future Rules 8–9. . . . . 70–71–72
" of Inspector-in-Chief, Rule 7. . . . . 69–70
" of Chief Supervisor, Press Supervision Rules 1–2. . 167–168
" of Chief Levee Inspector, Levee Inspection Rules 1–2. . . . . 177–178
" of Assistant Chief, and Asst. Supervisors, Press Supervision Rule 1 . . . . . 167
" of Assistant Levee Inspectors, Levee Inspection Rules 1–2. . . . . 177–178
Stapling Cotton, fixing charge for, Future Rule 14, Sec. 9. . 78
Supervisory Committee's report on Failures, Future Rule 63. . . . . 130–131
Vacancies in Board, Charter, Article VI; By-Laws, Article

XIX. . . . . 5–30
Vacancies, Board of Classers, Future Rule 8, Sec. 4. . . . . 71
Violations of Constitution, By-Laws, etc., Constitution, Article VIII. . . . . 14–15
**Brokerage**—On contracts, Future Rule 49. . . . . 112–113
On Spot Cotton, Spot Rule 21. . . . . 43
**Bucket Shops**—General Rule 18. . . . . 156
**Bulletins**—(See under Posting).
**Calls**—Future Rule 48; General Rule 10. . . . . 112–162–163
Appeals on, Future Rule 48. . . . . 112
Disputes on, Future Rule 48. . . . . 112
Duty of Superintendent, Future Rule 48. . . . . 112
First offer to buy or sell, Future Rule 48. . . . . 112
Fines imposed on, General Rule 10. . . . . 163
Hours of, Future Rule 48. . . . . 112
Manner of Conducting, Future Rule 48. . . . . 112
Rules Governing, Rules of Order. . . . . 162–163
**Certificated Cotton**—Bills for certification, Future Rule 29. . . . . 99–100
Certificates invalidated, Future Rule 21, Sec. 5. . . . . 89
Cost of, Future Rule 29. . . . . 99–100
Damage by fire, Future Rule 28. . . . . 98–99
Stored only in licensed warehouse, Future Rule 30. . . . . 100
**Charter**. . . . . 1–7
**Claims**—Against a deceased Member, Future Rules 62-66. . . . . 129–130–132
Against a failed Member, Future Rules 57-59. . . . . 127–128
Against a member who has not announced his failure, Future Rule 58. . . . . 127
Arising out of Transactions, By-Laws, Article XIV; General Rule 13. . . . . 27–153–154–155
For Fraudulent packing, Future Rules 17,31,33. . . . . 84–85–101–103
For irregularities in cotton, F. O. B. Rule 28. . . . . 57–58
Loss in weight, F. O. B. Rules 27-32-35-37. . . . . 58–59–60
On sales of spot cotton, Spot Rules 16-17-18-19-20. . . . . 42–43
On sales F. O. B. cotton, F. O. B. Rules 11. . . . . 50–51
**Classers**—Additional, Future Rule 8, Sec. 4. . . . . 71
**Classification of Cotton for Contract Delivery**—(See Inspection).
**Clerks**—By-Laws, Article XVI; General Rule 6. . . . . 29–150
**Closing of Exchange**—By-Laws, Article II; Future Rules 40, Sec. 3. . . . . 20–107
**Commission Law**—Future Rule 49. . . . . 112–113
**COMMISSION LAW—RULINGS ON:**
Number 1. Commissions must be paid on round transaction dating from its initiation; not from its completion . . . . . 114
" 2. No arrangements affecting net amount of commission permissible . . . . . 114
" 3. Members employed by firms cannot confer benefit of membership rates on the employers. . . . . 114
" 4. Monthly salaries for soliciting, and variable monthly charges for use of wires prohibited. . . . . 114
" 5. Commendam partnerships . . . . . 114
" 6. Special partners, etc. . . . . 114
" 7. Salaried agents—terms of employment. . . . . 114–115
" 8. Rebates to members and others not permissible. . . . . 115
" 9. No waivers of commissions on account of errors. . . . . 115

Number 10. Corporations in cotton business whose managing officer is a member are entitled to minimum rates 115
" 11. Only regular articled firms of which one partner is a member of the Exchange entitled to minimum commissions. . . . . 116
" 12. Managers of branch offices cannot participate in profits of offices unless members of firm..... 116
" 13. Maximum commission charge for delivery of cotton on contract. . . . . 116
" 14. Full commission charged on order from a non-member for a full member, where former neglects to give latter's name ..... 116
" 15. Commissions not chargeable for transfer where party carrying contracts disposes of his business to another. . . . . 116
" 16. Constituents of suspended firms..... 116
" 17. Where the same firm does business in New Orleans and elsewhere under different titles..... 116
" 18. Offsets of a firm's contracts against those in name of their agent cannot be made for commission purposes. . . . . 116–117
" 19. Membership by a paid employee of a firm does not extend to such firm advantages of such membership. . . . . 117
" 20. Firms or prviate wire houses cannot pay an operator's salary at an interior point..... 117
" 21. Same as ruling 9, page 115..... 117
" 22. Part use of wires may be furnished on payment of fixed monthly rental..... 117
Fixed tolls per hundred bales for use of wire prohibited. . . . . 117
Branch offices, regulations for establishment of same 117
Members leasing private wires, duties of same..... 117–118
" 23. When a private wire may not transmit messages free of charge ..... 118
Future brokerage firms prohibited from paying for sending messages relating to the market from one party to another..... 118
" 24. Wire houses cannot pay for telephone lines from correspondents' offices for use of customers.... 118
" 25. How Contracts should be carried to obtain rebate on non-members' business ..... 118
" 26. When employees' salaries may be increased..... 118
" 27. Salaried employees forbidden to receive rebate commission. . . . . 118
" 28. Salaries of operators at relay stations, etc..... 118–119
" 29. When a firm may not employ a member at a stipulated salary. . . . . 119
" 30. Broker may bear cost of telegraph or telephone messages. . . . . 119
" 31. Interest on margins not allowed..... 119
" 32. Honorary members entitled to members' commission rates. . . . . 119
" 33. Rate of commission chargeable on contracts of firm transferred to non-members ..... 119

Number 34. Brokers prohibited from accepting services of telegraph operators or person having other regular occupation. . . . . 119–120
" 35. Members may bear cost C. N. D. service..... 120
" 36. Brokers prohibited from sharing expenses of operating cotton exchanges at interior points..... 120
" 37. Paid employees of exchanges or boards of trade not eligible as representatives or agents of brokers in securing business ..... 120
**Committees**—Arbitration, By-Laws, Articles III-IX..... 21–24
Appeals on Arbitration, By-Laws, Articles III-X.....21–24–25
Appeal Committee on Classification, Future Rules 5-10, General Rule 13. . .....68–72–73–153
Board of Classers, Future Rules 5-8.....68–70–71
Books, By-Laws, Article XXI..... 30
Building, General Rule 13..... 153
Certifying to election or non-election of applicants, etc., General Rule 20..... 157
Commissions, Future Rule 55; General Rule 13..... 125–153
Cotton Seed and Cotton Seed Products..... 135–136
Credits, By-Laws, Article XX..... 30
Exchange Quotations, General Rule 13..... 152
Finance, By-Laws, Articles III-VIII; General Rule 15; 21–23–24–155
Floor, Future Rule 42; General Rule 13; Rules of Order 1-10. . . . . .....108–152–161–162
Freight Discrimination, General Rule 13..... 153
Futures, Future Rule 54; General Rule 13..... 125–152
General Appeal, General Rule 13..... 154–155
General Arbitration, General Rule 13..... 153–154
Information and Statistics, By-Laws, Articles III-VI; General Rule 13.....21–22–153
Insurance, General Rule 13..... 152
Legislation, General Rule 13..... 153
Membership, Constitution, Article VIII; By-Laws, Articles III-IV-XIII-XV; General Rules 18.....14–15–21–22–26–27–28–156–157
Nominating Committee, By-Laws, Article I, Sec 4..... 25–26
Protection of Shipping, General Rule 13..... 152
Rules, General Rule 13..... 152
Spot Quotations, By-Laws, Article VII; Future Rule 15; General Rule 16.....28–80–81–155–156
Supervision and Deliveries, Future Rules 5-6; General Rule 13; Supervision 3;.....68–69–152–167–168
Supervisory, Future Rules 54-55-57,58-59-63-64; General Rule 13. . . . . .....125–127–128–130–131–153
Weather, General Rule 13..... 153
**Complaints**—General, Constitution, Article VIII; By-Laws, Article XV. . . . . 14–28
Floor Committee, Rules of Order 1-10..... 161–162
**Contracts**—By-Laws, Article XVIII..... 30
Above or below Bid or Offered price, Future Rules 42-48.. 108–112
After prescribed hours, entered into, Future Rule 41, Sec. 3 108
Amendment of Rules, By-Laws, Article IV..... 22
Binding, when, Future Rule 50..... 120
Closing, Future Rule 50..... 120
Cotton to arrive (see F. O. B. Rules).
Decimals, Future Rule 42..... 108

Disputes, Future Rule 48 ..... 112
Entered into upon last day of trading, Future Rule 24 ..... 96
Failure to deliver or receive, Future Rule 26 ..... 96–97
Final settlement of, Future Rule 22, Sec. 2 ..... 90
Form of Contract, Future Rule 1 ..... 63–64
Form of Order to Buy or Sell, Future Rule 2 ..... 65
Form of Memorandum slip, Future Rule 47 ..... 111
Giving up name of principal, Future Rule 50, Sec. 3 ..... 121
Holidays, falling due on, By-Laws, Article XVIII; Future Rule 40 ..... 30–106
Legal demand for delivery, Future Rules 22-23 ..... 91–94
Notices shall be accepted, Future Rule 23 ..... 94
Notice of demand of delivery, Future Rules 22-23 ..... 91–94
Offers to buy or sell, Future Rules 42-48 ..... 108–112
Offsets and substitutions, Future Rules 26, Sec. 2, 50 ....97–120–121
Priority of bids, Future Rule 42 ..... 108
Payment for deliveries on, Future Rule 22, Sec. 5; 27 ..... 91–97
Reporting sales, Future Rule 43 ..... 109
Reporting transactions to principals, Future Rule 44 ..... 109
Seller to furnish slips, Future Rule 47 ..... 110
Short Notice, Future Rule 23 ..... 92
Signing of slips, Future Rule 47 ..... 110
Slips must be signed by members, Future Rule 47 ..... 120
Substitution of names, Future Rule 26, Sec. 2 ..... 97
Trading between members of same firm, Future Rule 46 .. 110
Termination of, dependent on delivery, Future Rule 50 .... 120
Verbal Order to buy or sell, Future Rules 1-2 ..... 64–65
Verbal, margins may be called on, Future Rule 51, Sec. 1 .. 122
When trading shall cease, Future Rule 24 ..... 96

**Controversies**, between members, By-Laws, Articles IX-XIV .... 24–27

**Co-Partnerships**, General Rule 4 ..... 149–150

**Cotton to Arrive**, (See Free on Board).

**Cotton Seed and Cotton Seed Products.**

Arbitration fees, by whom paid, Rule 1 ..... 135
Arbitration, Committee on, Rule 1 ..... 135
Affidavits, Rule 16 ..... 139–140
Brokerage, by whom paid, Rule 6 ..... 137
Barrels for exports, Rule 50 ..... 145
Committee—how appointed, Rule 1 ..... 135
Committee—its duties, Rule 1 ..... 135
Committee—to act as arbitrators, Rule 1 ..... 135
Committee—fees when serving as arbitrators, Rule 1 ..... 135
Claim, form of, Rule 17 ..... 140
Claims, when to be made, Rule 14 ..... 139
Claims on C. I. F. Contracts, when to be made, Rule 15 ... 139
Crude oil, how sold, Rule 19 ..... 140–141
Crude oil, how classed, Rule 20 ..... 141
Choice refined oil, Rule 24 ..... 141
Cotton seed cake, pounds per ton, Rule 28 ..... 142
Cotton seed cake, how classed, Rule 29 ..... 142
Choice cake, Rule 29 ..... 142
Cake, how packed, Rule 32 ..... 143
Cotton seed meal, measurement and classification, Rule 33. 143
Cotton seed, carload, Rule 38 ..... 143
Cotton seed, how classed, Rule 39 ..... 143
Cotton seed, prime, rule 40 ..... 144

Cotton seed, off, rule 41 ..... 144
Contracts, based upon shipside delivery, Rule 43..... 144
Contracts, F. O. B. terms, how construed, Rule 44..... 144
Contracts, seller's responsibility, Rule 45..... 144
Cooperage, Rule 49 ..... 145
Deliveries below grade, buyers' rights, Rule 48..... 144–145
Linters, classification of, Rule 1..... 136
Measurement of crude oil, Rule 18..... 140
Meal, choice, Rule 34 ..... 143
Meal, prime, Rule 35..... 143
Meal, off, Rule 36..... 143
Meal, how packed, Rule 37..... 143
Off oil, Rule 22 ..... 143
Off cake, Rule 31..... 141
Off refined oil, Rule 26..... 142–143
Private settlements not prohibited, Rule 1..... 142
Payment of non-resident buyers, Rule 4..... 136
Payment, when due, Rule 5..... 137
Prime crude oil, classification, Rule 21..... 137
Prime refined oil, Rule 25..... 141
Prime cake, Rule 30 ..... **141–142**
Quotations, by whom furnished, Rule 1..... 142
Rules, when applicable, Rule 8..... 137
Refined oil, how classed, Rule 23..... 138
Reclamations, limit of time, Rule 46..... 141
Sales, how made, Rule 2..... 144
Sellers' liability, Rule 15..... 137
Soap stock, Rule 27..... 139
Seed, delinted, Rule 42..... 142
Samples, how drawn, Rule 47..... 144
Sales, terms of, Rule 3..... 144
Telegrams, when open, Rule 7..... 137
Terms, Rule 9 ..... 137
Tanks, when to be furnished, Rule 10 ..... 138
Tanks, when to be loaded, Rule 11 ..... 138
Time contracts, Rule 12..... 138
Time contracts, duty of mill, Rule 13..... 138–139

**Deceased Members**, Arbitrations and appeals, Future Rules 60-61-62..... 139
Claims against, Future Rules 60-61-62-66.....128–129–130
Contracts closed, if the only Exchange member of his firm, Future Rule 66 .....128–129–130–132
Executor, duties and privileges of, Future Rules 60-61-62-66..... 132
Notice of death shall be posted, Future Rule 66.....128–129–130–132
Sole seller or buyer of contracts, Future Rule 66..... 132
Statements of claims against, Future Rules 60-61-62-66..... 132

**Deficiency in Weight**, Settlements for, Future Rule 26.....128–129–130–132

**Delivery of Cotton on Contract—**
Appeals on Classification, Future Rules 10-26, Sec. 8..... 96–97
Board of Classers, duties of in relation to, Future Rule 8.....72–73–84
Certificates of grades, how and when issued, Future Rule 21 ..... 70
Classification, how procured, Future Rule 16..... 88–89
Classification, Form of returns, Future Rule 32.....81–82–83–84
102

Compressed and shipmarked cotton, Future Rule 13, Secs. 6-7-8. . . . . 76–77
Damaged by fire, smoke or water, Future Rule 28..... 98–99
Delivery, what constitutes a good, Future Rule 22.....89–90–91–92
Exceptions, under what conditions made, Future Rule 35. 104–105
False Packed, seedy, sandy, gin-cut, etc., Future Rule 17. . . . . 84–85–86
Fees, Future Rules 10, Sec. 6; 14, Sec. 13; 78; 79....73–80–86–99–100
Final settlement for, Future Rule 22, Sec. 2..... 90
Fire, cotton damaged, Future Rule 28..... 98–99
General Provisions governing, Future Rule 3.....65–66–67
Holidays, affecting deliveries, Future Rule 40..... 106–107
Inspection Bureau, may be used by trade, Future Rule 35.. 104–105
Inspection and classification, how procured, Future Rule 16. . . . . 81–82–83–84
Legal demand for cotton, Future Rule 22..... 91
License, Warehousemen, Inspectors, Weighers, etc., must have, Future Rule 4..... 67–68
Limit of tender, Future Rule 17..... 86
Mixed packed cotton, sandy, dusty, Future Rule 13.....75–76–77
Notices, Future Rules 23-24.....92–93–94–95–96
Notice or certificate of deliverer, Future Rule 3 (B3)..... 67
Notice Day, Future Rule 23 (1)..... 92
Payment for, Future Rules 22, Sec. 5; 27..... 91–97
Penalty for non-delivery of receipts, Future Rule 26..... 97
Record of, Future Rule 25..... 96
Reference to Secretary of Agriculture, Future Rule 3 (a).. 67
Rejections, Bales subject to, Future Rule 17.....84–85–86
Rejections, charges on, Future Rule 18..... 86
Rejections may be submitted to Board of Classers, Future Rule 18. . . . . 86
Rejections, no appeal on, Future Rule 18..... 86
Samples, exposure of, Future Rule 16, Sec. 5..... 83
Samples, ownership of, Future Rule 19..... 87
Samples, delivery of, Future Rule 19..... 87
Samples, preparation of, for classification, Future Rule 12. 74–75
Sandy, Dusty, etc., Future Rule 13.....75–76–77
Settlements, Future Rule 15..... 80–81
Spot trade may use Inspection Bureau, Future Rule 35.... 104–105
Staple cotton, Future Rule 14 ..... 77–78
Staple cotton, Premium for, Future Rule 14, Secs. 10, 11, 12. . . . . 78–79–80
Staple cotton, Fees for valuation, Future Rule 14, Sec. 13.. 80
Trading in current month, last day of, Future Rule 24.... 95
To arrive, trade may use Inspection Bureau, Future Rule 35. . . . . 104–105
Transferable notices and short notices, Future Rule 23..92–93–94–95
Tender by deliverer on his own notice or certificate, Future Rule 3 (B3) ..... 67
Transferable notice, price at which issued, Future Rule 23. 95
Type Standards, Future Rule 39..... 106
Valuation Sandy and Dusty cotton, Future Rule 15, Sec. 4. 81
Warehouse, what constitutes one, Future Rule 36..... 105
Warehouse receipts, when and how issued, to be stamped, Future Rule 20 ..... 87–88
Warehouse receipts, failure to deliver, etc., Future Rule 26 97

Water, cotton damaged by, Future Rule 28..... 98–99
Weights, allowances, Future Rule 22, Sec. 4..... 91
Weight returns, Future Rule 11..... 73
**Delivery of Spot Cotton** (See Spot Cotton, Rules governing transactions in).
**Depositories for Margins:**
Future Rule 52, Sec. 3..... 123
**Disputes Between Members:**
Arbitration of, By-Laws, Articles IX-XIV..... 24–27
Arbitration, demand for, By-Laws, Article XIV..... 27
On call, settled by party making call, Future Rule 48.... 112
Other than on call, referred to Floor Committee, Rules of Order, 1-3..... 161
Submitting to members present, Future Rule 42..... 108
When referred to Committee on Futures, Future Rules 43-55..... 109–125
**Dues, Annual:**
Failure to pay and penalty, Constitution, Article VI; General Rule 2..... 13–150
For clerks, Article XVI, By-Laws; General Rule 6..... 29–150
**Election:**
Annual, Charter, Article VI; Constitution, Article III; By-Laws, Article I..... 4–5–12–19
Inspectors of Election, duties, Charter, Article VI; By-Laws, Article I..... 4–19
Of members, Constitution, Article V; By-Laws, Articles V-XIII; General Rule 20..... 12–22–26–157
**Exchange Business and Property:**
Charter, Article VI; By-Laws, Articles I-III..... 4–5–19–21
**Expulsion:**
For connection with a Bucket Shop, General Rule 18..... 156
For General reasons, Constitution, Article VIII; General Rule 18, Sec. 2..... 14–156
For trading after hours, Future Rule 41, Sec. 2..... 107–108
For Reporting False Sales, Future Rule 43..... 109
For Violating the Commission Law, Future Rule 49..... 112–113
**Failures:**
Voluntary notices of, Future Rule 57..... 127
Forced notices of, Future Rule 58..... 127–128
Record of claims, Future Rule 59..... 128
Rights of failed members, Future Rule 60..... 128–129
Arbitrations on claims, Future Rule 61..... 129
Appeals on claims, Future Rule 62..... 129–130
Schedule of failed members, Future Rule 63..... 130
Re-instatement of failed members, Future Rule 64..... 131
**False Packed Cotton, Etc.:**
Spot Rule 16; F. O. B. Rule 11; Future Rules 17-31..... 42–50–51–84–85–86–101
**Fees and Charges:**
Annual dues, Constitution, Article VI..... 13
Arbitrations, By-Laws, Article 9; Cotton Seed Rule 1; General Rule 13..... 24–136–153–154
Appeals on arbitrations, By-Laws, Article X; General Rule 13, Sec. 3..... 24–25–154
Appeals on classification, Future Rule 10, Sec. 6..... 73–99
Appeals on valuation staple cotton, Future Rule 14..... 80

Brokerage on contracts, Future Rule 49..... 112–113
Brokerage on spot cotton, Spot Rule 21..... 43
Classing and certificating for delivery, Future Rule 29, Sec. 1..... 99–100
Clerks, By-Laws, Article XVI; General Rule 6..... 29–150
Classing on appeal, Future Rule 10, Sec. 6, 29..... 73–99
Damaged by smoke or water, examinations of cotton, Future Rule 28..... 99
Initiation, Constitution, Article VI..... 13
Inspection for spot and to arrive trade, Future Rule 35... 104–105
Inspection for Contract delivery, Future Rule 29, Sec. 1.. 99–100
Interference with inspection, Future Rule 37..... 105
Opening inspected bales to ascertain sand, Future Rule 13 75–76
Rejections, passing upon, Future Rules 18, 29, Sec. 1.... 86–89
Samples failure to deliver to receiver, Future Rule 19... 87
Samples left in classification room, Storage on, Future Rule 38, Sec. 2..... 106
Samples, lost or destroyed, Future Rule 38, Sec. 1..... 105–106
Staple cotton, valuation of, Future Rule 14, Sec. 6..... 78
Staple, premium for, Future Rule 14, Sec. 13..... 80
Withdrawing from warehouse, Future Rule 33..... 103

**Fictitious Names, Use of:**
Future Rule 23..... 96

**Finance Committee:**
By-Laws, Articles III-VII; General Rule 15.....21–23–24–155

**Fines:**
Betting or offering to bet, Rules of Order 9..... 162
Calls on, Rules of Order..... 162–163
Disorderly conduct on floor, Rules of Order 3..... 161
Matching to fix prices of trade, Rules of Order 9..... 162
Marking Board, etc., Rules of Order 1..... 161
Non-payment of Annual dues or assessments, Constitution, Article VI; General Rule 2..... 13–149
Non-payment of fines or fees, Constitution, Article VI.... 13
Smoking, Rules of Order, 8..... 162
Split prices, Future Rule 42..... 108–109
Trading after hours, Future Rule 41, Secs. 2-3..... 107–108
Trading in puts and calls, Future Rule 41, Sec. 4..... 108
Violations of By-Laws by representative of absent member, By-Laws, Article XVI..... 29
Violations of decorum, Rules of Order 2..... 161

**Fire-Damaged Cotton:**
Future Rule 28..... 98–99

**Floor Committee:**
General Rule 13; Rules of Order, 1-2-3-4-5-6-7-8-9-10....152–161–162–163

**Floor Privileges:**
Constitution, Article IV; By-Laws, Article XVI., General Rules 10-11-12.....12–28–29–151–152

**Forms:**
Classification returns, Future Rule 32..... 102
Contract, Future Rule 1..... 63–64
Contract (Cotton to arrive), F. O. B. Rule 15..... 53
Contract slips, Future Rule 47..... 111
Of oath administered to Assistant Inspectors, Future Rule 6..... 69

Of request for Inspection of cotton, Future Rule 16, Sec. 2 ..... 82
Of request for supervision of cotton withdrawn from warehouse, Future Rule 21, Sec. 6 ..... 89
Order to buy or sell contracts, Future Rule 2 ..... 65
Power of Attorney, for member to do business for another member, Future Rule 56 ..... 126
Transfer of contract, Future Rule 23 ..... 94
Transferable notice, Future rule 23 ..... 93
**Free on Board Cotton:**
Allowances awarded in New Orleans and other undisputed claims, when paid, Rule 9 ..... 50
Allowances on samples drawn from compressed bales, Rule 28 ..... 59
Arbitrators, how appointed, Rule 21 ..... 55-56
Arbitrations on guaranteed through where fees shall be paid, Rule 36 ..... 60
Buyer may receive through Cotton Exchange cotton sold examination New Orleans, Rule 19 ..... 55
Buyer's risk, when at, Rule 3 ..... 48
Claims on cotton weighed, sampled and inspected in New Orleans, limit of time for presenting, Rule 9 ..... 50
Claims for fraudulently packed cotton, Rule 11 ..... 50-51
Cotton to be weighed in New Orleans, time limit therefor, Rule 12 ..... 51
Cotton sold landed mill points in the United States, Rule 30 ..... 50
Claims for deficiency in compressing, when presented, Rule 14 ..... 52
Compressed cotton re-weighed in New Orleans, settlements therefore. Rule 22 ..... 57
Cotton re-weighed and re-sampled in New Orleans must be with the knowledge of seller, Rule 24 ..... 57
Cotton sold for f. o. b. examination in New Orleans—how weighed; Rule 25 ..... 57
Claims for loss in weight from foreign points, Rule 32 ..... 59
Claims for loss in weight and deficiency in grade—limit of time for forwarding and presentation, Rule 33 ..... 59
Claims on f. o. b. guaranteed through for grade—when six per cent may be deducted from gross invoice weight, Rule 34 ..... 60
Controllers at port of discharge must establish claims relating to weight, tare or dampness on guaranteed through cotton, not covered by these rules, Rule 37 ..... 60
Cotton sold on guaranteed through terms, shipside New Orleans, when shall be shipped, Rule 12 ..... 51
Contract for F. O. B. Cotton, on description, Rule 15 ..... 53
Drafts and bills of lading, Rule 7 ..... 49
Drafts on F. O. B. cotton or cotton sold to reach New Orleans within specified time, Rule 13 ..... 51-52
Disputes as to grade or staple, how settled, Rule 21 ..... 55-56
F. O. B. sold on samples or types, buyer may reject or accept with an allowance if not represented in original samples or types, Rule 17 ..... 54
Fees, by whom paid, Rule 21 ..... 56
Fradulently shipped cotton, how settled, Rule 28 ..... 58
Gross landing weight, excess of bands, missing bands, Rule 26 ..... 58

Guaranteed through on samples must turn out equal to samples, Rule 29. . . . . 59
Insurance and Cotton Exchange Supervision and Levee Inspection, Rule 1 . . . . . 47
Loss in weight in case of arbitration allowance must be deducted from invoice weight, Rule 35 . . . . . 60
Maximum and minimum weights on guaranteed through shipments, Rule 10 . . . . . 50
Ocean freight and insurance on loss in weight, when refunded, Rule 27. . . . . 58
Price shall include freight to New Orleans and drayage to shipside, Rule 1. . . . . 47
Payment, when shall be demanded, Rule 3. . . . . 47–48
Payment, when shall be made, Rule 5 . . . . . 48
Responsibility of sellers, Rule 6. . . . . 49
Rejections under Rule 17, how settled, Rule 18. . . . . 54
Rejections to be invoiced back to local seller, duty of local seller, Rule 20 . . . . . 55
Sales to be delivered "free on Board" New Orleans, Rule 1. . . . . 47
Sales on actual samples when cotton at buyer's risk, Rule 2 47
Sales on description when cotton at buyer's risk, Rule 2. . . 47
Sales New Orleans delivery "barring fire," Rule 3. . . . . 47
Sales New Orleans delivery without condition "barring fire," Rule 4 . . . . . 48
Shipments from interior, limit of time, Rule 5. . . . . 48
Samples on sales for examination in New Orleans, when may be demanded, Rule 8. . . . . 49
Samples on sales guaranteed through terms, when and how may be forwarded, Rule 8. . . . . 49–50
Seller's responsibility for weight, when ceases, Rule 12. . . . 51
Sealing of types, Rule 16. . . . . 54
Seller's responsibility ceases when cotton reweighed and resampled in New Orleans, except in cases of fraudulently packed, Rule 23. . . . . 57
Suspicion of serious irregularities, how met, Rule 28. . . . . 58
Tare allowance cotton sold in New Orleans, Rule 25. . . . . 57
Unmerchantable bales, Rule 10. . . . . 50
Uncompressed bales, settled for at actual weights, Rule 22 57
When seller replaces with spot, Rule 3. . . . . 48
Weights of f. o. b. cotton sold examination in New Orleans and for forward shipment or delivery, Rule 10. . . . . 50
Weight settlements, Rule 31 . . . . . 59

**Futures, Committee on:**
Disputes referred to, Future Rule 55. . . . . 125

**Future Quotations Committee:**
Duty when no sales reported, Future Rule 65. . . . . 131

**Gin-Cut Cotton:**
Future Rule 17 . . . . . 84

**Gin-Fall Cotton:**
Future Rule 17 . . . . . 86

**Grade, Certificate of: . . . .**
Future Rule 21 . . . . . 88

**Grades of Cotton Deliverable on Contracts:**
Future Rules 15-32 . . . . . 80–81–102

**Holidays:**
Contracts falling due on, By-Laws, Article XVIII; Future Rule 40, Secs. 1-2.....30–106–107
How declared, By-Laws, Article II, Sec. 3; Future Rule 40, Sec. 3.....20–107
**Hours:**
Exchange (opening and closing), By-Laws, Article II, Sec. 3; Future Rule 40, Sec. 3.....20–107
Trading after, Future Rule 41, Secs. 2-3.....107–108
**Immature Staple:**
Future Rule 17.....85
**Information and Statistics, Committee of:**
By-Laws, Article III-VI; General Rule 13.....21–22–153
**Initiation Fee:**
Constitution, Article VI.....13
**Inspection and Classification of Cotton for Contract Delivery:**
Absence of direction as to marking, Future Rule 16.....82
Absence of Member of Appeal Committee on Classification, Future Rule 10.....73
Absence of Member of Appeal Committee on Valuation, Future Rule 14, Sec. 14.....80
Absence of Inspector-in-Chief, Future Rule 21, Sec. 2.....88
Additional Classers, Future Rule 8.....71
Allowance for staple, Future Rule 14.....77–78–79–80
Allowance for storage charges, Future Rule 22, Sec. 3.....91
Allowance for weight, Future Rule 22, Sec. 4.....91
Allowanace on compressed cotton, Future Rule 13, Secs. 7-8.....76
Appeal from Classification of Board of Classers, Future Rule 17, Sec. 8.....84
Arbitrations by Board of Classers other than deliveries on Future Contracts, Future Rules 35.....105
Bands, Removal of, Future Rule 13, Sec. 4.....75
Bill for certification charges, Future Rule 29, Sec. 2.....100
Bills in case of delivery on Saturdays, Future Rule 22, Sec. 5.....92
Bills for rejections, Future Rule 29, Sec. 2.....100
Board of classers, duties of, Future Rule 8.....70–71
Certificate of Grade (See Grade Certificate), Future Rule 21.....88–89
Certification, General provisions governing, Future Rule 3.....65–66–67
Charge for classing on appeal, Future Rule 10, Sec. 6.....73
Charge for Inspecting, etc., Future Rule 29.....99–100
Charge for rejections, Future Rules 18-29.....86–99–100
Charge for appeal on staple valuation, Future Rule 14, Sec. 13.....80
Charge for staple valuation, Future Rule 14, Sec. 13.....80
Claims on Inspection Fund, Future Rule 33.....103
Classers, additional, Future Rule 8.....71
Classification, General provisions covering, Future Rule 3..65–66–67
Classing, procedure in, Future Rules 24; 16, Sec. 5.....74–75–83
Clerk Board of Classers, Future Rule 9.....71–72
Cotton not ready for, penalty, in case of, Future Rule 16.....81
Committee on Supervision and Deliveries, Future Rules 4-6.....67–68–69
Compressed cotton, Future Rule 13, Sec. 6.....76
Damage by smoke or water, examination of, Future Rule 28.....98–99

Deficiency in weight, settlement for, Future Rule 26..... 96-97
Delivery complete when certificate of grade and warehouse receipt delivered, Future Rule 22, Sec. 1..... 89-90
Dust and sand, cotton containing, valuation of, Future Rule 15, Sec. 4..... 81
Excess of sand, seed and dirt, Future Rule 17.....84-85-86
Expenses, receiver's share of, Future Rule 29, Sec. 1..... 99
Failure to pay bills for Inspection, Future Rule 29, Sec. 2.. 100
Failure to deliver certificates, Future Rule 22, Sec. 2..... 90-91
False Packed, Gin-cut, sandy, seedy, etc., Future Rules 17-33.....84-85-86-103
False Packed, responsibility for, Future Rule 31..... 10
Fire in warehouse, Future Rule 28..... 98-99
Form of Classification returns, Future Rule 32..... 102
Form of request for inspection, Future Rule 16, Sec. 2.... 82
Gin fall cotton, Future Rule 17 (9)..... 86
Grade certificate, Future Rule 21..... 88-89
Grades, intermediary, Future Rule 15..... 81
Grades used in classing, Future Rules 8, Sec. 3; 10, Sec. 8; 39.....71-73-106
Immature staple, Future Rule 17..... 85
Inspecting for sound and merchantable, Future Rule 12, Sec. 2..... 74-75
Inspecting, Method of, Future Rules 12, Sec. 2; 16, Sec 3.....74-75-182
Inspection, charge for, Future Rule 29..... 99-100
Inspection Fund, Future Rules 33-34..... 103-104
Inspection, General provisions covering, Future Rule 3...65-66-67
Inspection, request for, Future Rule 16.....81-82-83-84
Inspector-in-Chief (See under I).
Inspectors (See under I).
Interference with Inspection, Future Rule 37..... 105
Liability of Inspection Fund of Exchange, Future Rules 33-34..... 103-104
Licenses, Future Rules 4-6.....67-68-69
Lost or destroyed samples, Future Rule 38.....105-106
Margin may be called at any time before delivery, Future Rule 52, Sec. 2..... 123
Marking, absence of direction as to, Future Rule 16..... 82
Memorandum of class, Future Rule 16, Sec. 5..... 83
Mixed Packed cotton, Future Rule 13..... 75
Moisture, possible damage from, Future Rule 16, Sec. 4... 83
Notice of Grade, written, Future Rule 22, Secs. 1-2-5, and Rule 23.....89-90-91-94
Notification of holding transferable notice must be stamped, Future Rule 22, Sec. 5..... 91
Plated cotton, Future Rule 17..... 84
Priority of claims on Inspection Fund, Future Rule 34.... 103-104
Perished staple, Future Rule 17..... 85
Quarter grades, Future Rule 15, Sec. 3..... 81
Re-baled cotton, Future Rule 17..... 84
Recording of classification and weight, Future Rule 16, Sec. 7; 20, Sec. 2.....84-87-88
Reference to Secretary of Agriculture, Future Rule 3 B3.. 67
Re-ginned cotton, Future Rule 17..... 84
Re-inspections, Future Rule 33..... 103

Rejections, bales subject to, Future Rule 17.....84-85-86
Re-packed cotton, Future Rule 17..... 85
Request for inspection, Future Rule 16.....81-82-83-84
Samples (See under S).
Sampling, method of, Future Rule 12..... 74-75
Sand, Dust, Dirt, etc., Future Rules 13-17.....75-76-84
Sand or dirt, cotton containing, valuation of, Future Rule 15, Sec. 4 ..... 81
Settlement of contracts, Future Rule 26..... 96-97
Settlements of grade differences to liquidate future contract, Future Rule 15, Sec. 2..... 80
Staple, allowance and premium for, Future Rule 14....77-78-79-80
Staple, Guarantee of, Future Rule 14, Sec. 4..... 77
Staple, minimum length deliverable, Future Rule 17 (11).. 86
Staple, Perished or immature, Future Rule 17..... 85
Staple, maximum premium allowed, Future Rule 14, Sec. 1. 77
Staple, request for consideration of, Future Rule 14, Sec. 2 77
Staple, right of appeal, Future Rules 8, Sec. 2; 14, Sec. 3.. 71-77
Staple, Valuation of, Future Rule 14, Sec. 11..... 79
Storage charges, Future Rule 22, Sec. 3..... 91
Storage of certificated cotton, Future Rule 30..... 100-101
Tags, Future Rules 11-12.....73-74-75
Time limit of, for making claims on Inspection Fund, Future Rule 33 ..... 103
Transfer of certificated cotton, Future Rule 30..... 100-101
Type Standards, Future Rule 39..... 106
Valuation, Appeal Committee on, Future Rule 14, Sec. 12.. 79
Valuation, Committee on, Future Rule 14, Sec. 11..... 79
Unmerchantable cotton, Future Rule 17.....84-85-86
Warehouse receipts, Future Rules 20-22.....87-88-89-90-91-92
Warehouse receipts, Indorsement of, must be witnessed, Future Rule 22, Sec. 1..... 89-90
Weighing (See under "W").
Weight, deficiency in, settlement for, Future Rule 26, Sec 1. ..... 96-97

**Inspection Bureau:**

Absence of Inspector-in-Chief, Future Rule 21, Sec. 2..... 88
Bills for Inspection, etc., Future Rule 29, Secs. 2-3..... 100
Committee on Supervision and Deliveries, duties of, Future Rules 4-6. ..... 67-68-69
Certificate of Grade or written notice of grade, Future Rules 21-22. .....88-89-90-91-92
Final Classification, shall record, Future Rule 16, Sec. 7.. 84
Inspection, request for, Future Rule 16, Secs. 1-2..... 81-82
May be used by trade in spots and F. O. B., Future Rule 35 104
Organization of, Future Rules 6-7.....68-69-70
Re-inspection, Future Rules 33-34..... 103-104
Samples, Retention of, Future Rules 16, Secs. 5-6; 19....83-84-87
Samples, ownership of, Future Rule 16, Sec. 6; 19..... 84-187
Weight, notation of on Warehouse receipts, Future Rule 20, Sec. 2 ..... 87

**Inspection Fund:**

Claims against, Future Rules 33-34..... 103-104
Constitution of, Future Rule 29, Sec. 3..... 100
False packed cotton, responsibility of, Future Rule 31.... 101

**Inspector-in-Chief:**
Absence of, Future Rule 21, Sec. 2 ..... 88
Appointment of, Future Rules 5, 7, Sec. 1 ..... 68–69
Assistant Inspectors, appointment of, Future Rule 7, Sec. 1 69
Certificate of Grade, shall sign, Future Rule 21 ..... 88–89
Chairman Board of Classers, shall be, Future Rule 8, Sec. 1 70
Cotton not ready for inspection shall report to Committee on Supervision and Deliveries, Future Rule 16 (3) ... 81
Damage by fire, smoke or water, duties in case, Future Rule 28 ..... 98–99
Delivery of cotton sold on Spot or F. O. B., Future Rule 35 104
Duties, General, Future Rules 7, 8, 16 .....69–70–71–98–99
Salary of, Future Rule 8, Sec. 1 ..... 70
Committee on Supervision and Deliveries, Secretary of, Future Rule 7, Sec. 1 ..... 70
**Inspectors:**
Duties of, Future Rules 11, 12, 16, Secs. 3-4 .....73–74–75–82–83
Inspection of cotton, future Rule 16, Secs. 3-4 ..... 82–83
License, must be, Future Rule 4 ..... 67
Oath required of, Future Rule 6 (5) ..... 69
Rejections by, Future Rule 18 ..... 86
Samples of bales rejected by, shall be preserved, Future Rule 12, Sec. 2 ..... 74–75
**Inspectors of Elections:**
Charter, Article VI; By-Laws, Article I, Sec. 2 ..... 4–5–19
**Interference With Inspection:**
Future Rule 37 ..... 105
**Intermediary Grades:**
Future Rule 15, Sec. 3 ..... 81
**Legislation, Committee on:**
General Rule 13 ..... 153
**Levee Inspection:**
Annual election of Inspectors, Rule 1 ..... 177
Benefit of Rules allowed to non-members, Rule 14 ..... 181
Certificates of condition of cargoes to be forwarded to ports of destination, Rule 7 ..... 179
Chief Supervisor's report to Supervision and Deliveries Committee, Rule 10 ..... 180
Certificates of cotton unfit for shipment, Rule 11 ..... 180
Duties and powers of President of Exchange, Rule 2 ..... 177
Duties of Levee Inspectors, Rule 3 ..... 177–178
Daily reports of cargoes, weather, etc., Rule 4 ..... 178
Deck loads and receipts on shipboard of cotton in bad condition, Rule 5 ..... 178
Election and term of office of Inspectors, Rule 1 ..... 177
Fees on local shipments, Rule 12 ..... 180
Fees on Transit cotton, Rule 13 ..... 181
Interference with Inspectors on duty, Rule 9 ..... 179
Payments of inspection fees through brokers, Rule 12 .... 180
Salaries of Chief's Assistants, Rule 1 ..... 177
Skidding receipts by steamboats, Rule 6 ..... 179
Shipmasters refusing to facilitate Inspectors, Rule 8 ..... 179
Superintendent's duties relative to bills, Rule 12 ..... 180–181
**Liability of Exchange:**
Inspection Fund, Future Rules 33-34 ..... 103–104
On certificates, Future Rules 21-34 .....88–103–104
On false-packed, Future Rule 31 ..... 101

**Licenses:**
Cancellation, Future Rule 4 (4)..... 68
Issuance of, Future Rule 4..... 67
Parties engaged in handling cotton, Future Rule 4..... 67
Suspension of, Future Rule 6 (4)..... 67
Warehouse, of, Future Rule 4 (4)..... 69
**Linters:** 68
Cotton seed products, Rule 1 (C)..... 136
**Loose Cotton:**
Supervision Rules 7-10-11-12-13-18.....169–170–171–173
**Lot Numbers:**
Future Rules 11-12-16.....73–74–75–82–83
**Margins:**
Banks as depositories of margins, Future Rule 52, Sec. 3.. 123
Bid prices governing calls for, Future Rule 52, Sec. 1.... 122–123
Certified checks for margins, Future Rule 53, Sec. 1..... 124
Depository for, Future Rule 52, Sec. 3..... 123
Disputes as to amounts due, Future Rule 53, Sec. 2..... 124
Failure to deposit, Future Rule 52, Sec. 1..... 123
Hours for depositing with Superintendent, Future Rules 51-52.....121–122–123
Interest on margins deposited (C. L. R. 31)..... 119
May be called after ring is formed, Future Rule 50, Sec. 4 121
May be called at any time before delivery, Future Rule, 52, Sec. 2..... 123
Office of member called, procedure when closed, or unknown, Future Rule 52, Sec. 1..... 122
Original, Future Rule 51..... 121–122
Release of, Future Rule 52, Sec. 2..... 124
Risks, at whose, Future Rule 53, Sec. 3..... 124
Settlements on contracts closed because of failure to deposit, Future Rule 52..... 123
Verbal contracts may be called on, Future Rule 51..... 121
**Meetings:**
Board of Directors, By-Laws, Article II..... 20
Exchange, Constitution, Article X..... 15
**Members and Memberships:**
Admission of members, Constitution, Article V..... 12
Applicants and applications for, Constitution, Article V; By-Laws, Article XIII; General Rule 12.....12–26–27–151
Bucket Shops, connection with, General Rule 18..... 156
Charges against, Constitution, Articles VIII. ..... 14
Circulars published by, General Rule 18, Sec. 2..... 156–157
Committee on, By-Laws, Articles III-V..... 21–22
Complaints of members, By-Laws, Article XV..... 28
Deceased members, Future Rule 66..... 132
Duties of members, Constitution, Article VII..... 13
Failed members, Future Rules 57, 58, 59, 60, 61, 62, 63.....127–128–129–130–131
Failure to pay fines, dues, awards, etc., Constitution, Article VI; General Rule 2..... 13–149
Initiation fees, Annual dues; Constitution, Article VI.... 13
Misstatements published by, General Rule 18, Sec. 2..... 156
Objectionable partnerships, General Rule 4, Sec. 2..... 149–150
Partners of deceased members, General Rule 4..... 149
Powers of Attorney, granted by, Constitution, Article

XVI; General Rule 6.....28–29–150
Qualifications for, Constitution, Article IV..... 12
Reinstatement of failed, Future Rule 64..... 131
Request for revocation of visitor's car, General Rule 10... 151
Resignations from, Constitution, Article VII; General Rule 5..... 14–150
Settlement of claims of, By-Laws, Article XIV..... 27
Share of capital stock, must hold at least one, Charter, Article IV..... 4
Violations of decorum by, Rules of Order..... 161–162
Writing or marking on Boards, General Rule 8..... 151

**Merchantable Cotton:**
Minimum weight for, Spot Rule 7..... 38

**Memorandum of Class:**
Future Rule 16, Sec. 5..... 83

**Mixed Packed Cotton:**
Future Rules 13-17..... 75–84

**Nominating Committee:**
By-Laws, Article I, Sec. 4..... 19–20

**Non-Members:**
Rights of, Constitution, Article VIII..... 14

**Notice Days:**
Future Rules 23-24..... 92–95

**Notices** (See Transferable Notices).

**Oaths:**
On licensing Assistant Inspectors, Future Rule 6..... 69

**Offers to Buy or Sell:**
Acceptance of whole quantity offered takes precedence, Future Rule 42..... 108
Disputes arising from, Future Rule 42..... 108
On calls, Future Rule 48..... 112
Split prices, Future Rule 42 (3)..... 108–109
When not made on business days and prescribed hours, Future Rule 41..... 107–108
When vacated, Future Rule 48..... 112

**Officers of the Exchange:**
Constitution, Article III; By-Laws, Article III..... 12–21
Board of Directors (See under B), Charter, Article VI.... 4–5
President (See under P), Charter, Article VI..... 4–5
President pro tem. By-Laws, Articles II-III..... 20–21
Vice President (See under V), Charter, Article VI; By-Laws, Article II..... 4–5–20
Treasurer (See under T), Charter, Article VI; By-Laws, Article XII..... 4–5–25
Treasurer pro tem., By-Laws, Article III..... 21
Secretary (See under S), By-Laws, Article II..... 25

**Offices:**
Closed, where notice is to be delivered, Future Rule 23... 92
Closed or unknown in case of margin call, Future Rule 22.. 122
Members must have offices within half mile of Exchange for service of notice, etc., Future Rule 45..... 109–110

**Offsets and Substitutions:**
Future Rules 26, 50..... 97–120–121

**Orders to Buy and Sell:**
Subject to By-Laws and Rules and to U. S. Cotton Futures Act, Future Rule 2..... 65

**Original Margins:**
Future Rule 51 ..... 121
**Partnerships:**
R. C. L. 5, General Rule 4, Sec. 2 ..... 114–149–150
**Penalty For** (See also Fines):
Annual dues, assessments, fines, etc., non-payment of, Constitution, Article VI; General Rule 2; Rules of Order VI. ..... 13–149–161
Commission Law, Violation of, Future Rule 49, Sec. 4 ..... 113
Deficiency from weights specified, Future Rule 27 ..... 96
Disorderly conduct on floor, Rules of Order 1 to 10 ..... 161–162
Failure to deliver certificate of grade and Warehouse receipt, Future Rules 22, Sec. 2; 26 ..... 90–97
Failure to deliver or receive cotton, Future Rule 26 ..... 96
Failure of holder to notify drawer of notice, Future Rules 23-25. ..... 94–96
Failure to make final settlement on contracts, Future Rule 22, Sec. 2 ..... 91
Failure to pay classing and inspection bills, Future Rule 29, Sec. 2 ..... 100
Failure to pay dues, Constitution, Article VI ..... 13
Failure to qualify as member, General Rule 2 ..... 149
Failure to qualify as Visiting Member, General Rule 2 ..... 149
Fictitious names, use of, Future Rule 23 ..... 95
Interference with inspection and weighing, Future Rule 37 ..... 105
Margins, failure to deposit, Future Rule 52 ..... 123
Non-payment of annual dues, fines, assessments, etc., Constitution, Article VI; General Rule 2; Rule of Order 6. ..... 13–149–161
Non-payment of awards of Board of Classers, Future Rule 29. ..... 100
Non-payment of awards of Appeal Committee on Classification, Future Rule 29 ..... 100
Omitting to enter claim on Record of Failures, Future Rules 58-59. ..... 127–128
Representatives of members, misconduct of, By-Laws, Article XVI. ..... 29
Samples, failure to deliver, Future Rule 19 ..... 87
Samples, failure to remove, Future Rule 38 ..... 106
Trades in contracts at split prices, Future Rule 42 ..... 108
Trading after hours, Future Rule 41; General Rule 7 ..... 107–162
Trading in Puts and Calls, Future Rule 41, Sec. 4 ..... 108
Transferable notice, failure to forward within time, Future Rule 22. ..... 92
Transferable notice, failure to have demand stamped, Future Rules 23, 25 ..... 94–96
**Perished Staple:**
Future Rule 17 ..... 85
**Petitions:**
By-Laws, Article II; General Rule 8 ..... 20–151
**Posting of**
Amendments to Constitution or By-Laws, Article X ..... 15
Amendments to Rules, By-Laws, Article IV ..... 22
Applications for membership, By-Laws, Article XIII ..... 26
Bids (10:30 A. M. and 12:30 P. M.), Future Rule 52 ..... 123
Damaged by fire, smoke or water, cotton, Future Rule 28 ..... 98

Death of a member, Future Rule 66..... 132
Deliveries on contracts, Future Rule 25..... 96
Election of members, General Rule 20..... 157
Failed members, Future Rules 57-58..... 127–128
Margin calls, when office closed, Future Rule 52..... 122
Nominations for Officers and Directors; By-Laws, Article 1. . . . . 20
Notice, transferable, when office is closed, Future Rule 23. 92
Partnership, dissolution of or changes in, General Rule 4, Sec. 2. . . . . 149–150
Power of Attorney, revocation of, Future Rule 56..... 126–188
Sales for future delivery, Future Rule 43..... 109
Spot Quotations, Article VII By-Laws; General Rule 16. . . . . 23–155–156
Transferable notice, price at which shall be issued, Future Rule 23. . . . . 95

**Powers of Attorneys:**
By-Laws, Article XVI; Future Rule 56; General Rule 6. . . . . 28–125–150–188

**President:**
Absence of, temporary, By-Laws, Article 2. ..... 20
Annual election, duties in case Directors not elected, Charter, Article VI; By-Laws, Article I..... 5–19
Appoint Supervisors and Assistant Levee Inspectors, may—Press Supervision 2; Levee Inspection 2..... 167–177
Call, selecting, to conduct in absence of Superintendent, Future Rule 48 ..... 112
Citations shall be served on, Charter, Article II..... 3
Countersign checks, By-Laws, Article XII..... 25
Documents, petitions, etc., must have permission of to expose or introduce, General Rule 8..... 151
Inspector-in-Chief, absence of, Future Rule 21..... 88
Inspectors of Election, shall fill vacancies, Charter, Article VI; By-Laws, Article I..... 4–5–19
Licenses, shall sign, Future Rule 4..... 67
Meetings, By-Laws, Article II..... 20
Member of Committee on Supervision and Deliveries, Future Rule 6..... 68
Officers and Directors, failure to elect, duties of, Charter, Article VI; By-Laws, Article I..... 4–5–19
Posting on bulletin, under exclusive control of, Rules of Order 4. . . . . 162
Pro Tempore, By-Laws, Articles II-III..... 20–21
Quorums, may make appointments to create, General Rule 14. . . . . 155
Shares of stock, shall sign, Charter, Article III..... 4
Vacancies in committees, may fill, General Rule 14..... 155
Visitor's cards, may issue, General Rule 11..... 151
Visitor's cards, shall revoke, General Rule 10..... 151

**Presses** (See Warehouses).
**Pressmen** (See Warehousemen).
**Principals, Rights of:**
Future Rule 44 ..... 109
**Puts and Calls:**
Penalty for trading in, Future Rule 41..... 108
**Quarter Grades** (See Intermediary Grades).

**Quorum:**
Board of Classers, Future Rule 8..... 71
Committees lacking, General Rule 14..... 155
Exchange meetings, By-Laws, Article II..... 20
Floor Committee, Rule of Order 5..... 161
Spot Quotation Committee, By-Laws, Article VII..... 23

**Quotations:**
Continuous, General Rule 21..... 157
Spot, By-Laws, Article VII; Future Rule 15..... 180

**Rates of Brokerage:**
Spot Rule 21; Future Rule 49.....43–112–113

**Rebaled Cotton:**
Future Rule 17 ..... 84

**Record of Demands Stamped:**
Future Rule 22, Sec. 5..... 94

**Record of Failures:**
Future Rules 58, 59, 60.....127–128–129

**Record of Transactions:**
Time and price must be reported, Future Rule 43..... 109
Transactions reported must be made by open outcry, Future Rule 43. . . . . 109

**Registration of, or Changes in, or Dissolution of; Co-Partnerships:**
General Rule 4, Sec. 2. . . . . 149

**Re-Instatement of Failed or Suspended Member:**
Disqualified for, Future Rule 63..... 130
How obtained, Future Rule 64..... 131

**Rejections:**
Appeal from decision Board of Classers, Future Rules 8-18. 71–86
Assistant Inspector and Sampler, Future Rule 12..... 75
Charge for, Future Rules 18-29..... 86–99
Compensation for, where cotton is sold on samples at average price, Spot Rule 6..... 38
Improper, Future Rule 12, Sec. 2..... 75
Moisture, in the event of, Future Rule 16..... 83
On Free on Board cotton, F. O. B. Rules 17-18-20..... 54–55
Sampler and Inspector, by, Future Rule 12..... 75
Samples of, may be sent to Board of Classers, Future Rule 18. . . . . 86

**Release of Margins:**
Future Rule 53 ..... 124

**Repacked Cotton:**
Future Rule 17 ..... 84

**Reporting Sales of Futures:**
Future Rule 43..... 109

**Representatives of Members:**
By-Laws, Article XVI; General Rule 6..... 28–150

**Resignations and Suspensions:**
Posting of, General Rule 5..... 150

**Resolutions Offered at Exchange Meetings:**
Must be in writing, By-Laws, Article XVIII..... 29

**Revenue Stamps:**
Sales contracts must have affixed, Future Rule 1, Sec. 4... 65

**Rings:**
Future Rule 50..... 120–121

**Rules:**
Order subject to, Future Rule 2..... 65

**Sales of Futures:**
Reporting, Future Rule 43 ..... 109
**Sales of Spots:**
Reports of confidential, General Rule 16 ..... 156
**Samplers:**
Licensed, must be, Future Rule 4 ..... 67
Not to pass on questions of grade, Future Rule 12 ..... 75
Shall examine each bale, Future Rule 12 ..... 74
Top side of bale shall be drawn from, Future Rule 12 .... 74
**Samples:**
Cutting bands for samples, Supervision Rule 8 ..... 169
Disposition of, Future Rule 16, Secs. 5-6-19 ..... 83-87
Drawn by licensed sampler only, Future Rule 12 ..... 74
Examination of, may be made on holidays, Future Rule 10. 72
Failure to deliver, Future Rule 19 ..... 87
Failure to remove, Future Rule 16, Sec. 6 ..... 84
Guarantee of correctness of, Spot Rule 4 ..... 36
How drawn, Spot Rule 4; Future Rule 12; Press Supervision Rule 9 ..... 36-74-170
Left in Classification room, storage on, Future Rule 38 ... 104
Loose cotton, disposition of, Press Supervision Rule 10 ... 170
Loose, made from, Press Supervision Rule 11 ..... 170
Loose, baling of, Press Supervision Rule 12 ..... 170
Lost or destroyed, Future Rule 38 ..... 105
Not retained by Inspection Bureau, Future Rule 38 ..... 106
Of rejections may be sent to Board of Classers, Future Rules 12-18 ..... 75-86
Ownership of, Future Rule 19 ..... 87
Reserve samples, examination of etc., Spot Rule 4 ..... 36
Responsibility for, Future Rule 19 ..... 87
Sealing of, F. O. B. Rule 16 ..... 54
Weight of, Press Supervision Rule 7 ..... 169
When may be demanded, F. O. B. Rule 8 ..... 49
**Sand, Dirt, Etc.:**
Future Rule 17 ..... 84
**Seal:**
Corporate, Charter, Article IX; General Rule 1 ..... 6-149
**Secretary of Agriculture:**
Certificate of grade of, Future Rule 22 ..... 90-91
Notice of reference to, must be given to other party, Future Rule 22 ..... 91
Reference on class and staple, Future Rules 3 (B3); 10; 12; 22 ..... 67-72-75-90-91
Rulings of, Future Rule 15 ..... 80-81
**Secretary of the Exchange:**
By-Laws, Article IX ..... 25
Must countersign licenses, Future Rule 4 ..... 67
**Secretary Committee on Supervision and Deliveries:**
Future Rule 7 ..... 69
**Seed, Excess of:**
Future Rule 17 ..... 84
**Settlement of Contracts:**
Average price, compensation for grades at, Spot Rule 6 .... 38
Claims, settlement of, in case of failure, Future Rule 57 .. 127
Compensation for grades on average price, Spot Rule 6 .... 38
Death, in case of a, Future Rule 66 ..... 132

Deficiency from weights specified, F. O. B. Rules 10, 37; Future Rule 26.....50–57–96–97
Difference in grade, Spot Rule 6; F. O. B. Rule 7..... 38–84
Failure, in case of, Future Rule 57..... 127
Failure of margin depositories, Future Rule 53..... 124
Failure to make delivery, etc., Future Rules 22, 26; 89–90–91–96–97
Final, Future Rule 22, Sec. 2..... 90
Grades considered in, Future Rule 15..... 80
Mutual consent, by, Future Rule 26..... 96
Offset and substitution, Future Rules 26, 50, Sec. 2..... 97–121
Rejections on f. o. b. sales, F. O. B. Rules 17-18-20-21..54–55–56
Rings, Future Rule 50..... 120
Tender by deliverer on own notice of grade, Future Rules 3-28..... 67–98
Transferable notices, Future Rules 23-24.....92–93–94–95

**Short Notices:**
Future Rule 23..... 92

**Slips:**
Contract, Future Rule 47..... 111
Members must have permanent offices registered, Future Rule 45..... 109
Powers of Attorney for signing, Future Rule 47..... 111
Revenue Stamps, must be affixed to contract, Future Rule 1 65

**Smoke-Damaged Cotton,** Future Rule 28..... 98

**Smoking:**
Rule of Order 8..... 162

**Spot Cotton:**
Average price, compensation for grades on, Rule 6..... 38
Allowances, how arrived at, Rule 14..... 41
Bagging, amount used to cover bales, Rule 9..... 39
Bagging, excess of, Rule 9..... 39–40
Bagging, unmerchantable, Rule 10..... 40
Buyers' right when cotton is in unmerchantable condition, Rule 11..... 40
Brokers, duties of, purchasing for parties not members, Rule 13..... 41
Contract of sale, when final, Rule 1..... 35
Classing and grading by Exchange, Rule 4..... 37
Commissions on buying and selling, Rule 21..... 43
Compressed bales, allowance on, Rule 8..... 38
Classing, inspecting and sampling, Rule 4..... 36–37
Delivery, when completed, Rule 12..... 40
Delivery, payment on account before, Rule 12..... 41
Falsely or fraudulently packed cotton, Rule 16..... 42
Fees, Rule 4..... 37
Guarantee of Exchange, Rule 4..... 36–37
Grading and Classing by Exchange, Rule 4..... 37
Guarantee of Exchange, Rule 4..... 36–37
Inspecting, Sampling and Classing, Rule 4..... 36–37
Irregularities, claims for, Rule 16..... 42
Limit of time for receipt, Rule 2..... 35
Light-weight bales, Rule 7..... 38
Merchantable condition, guarantee of, Rule 11..... 40
Members, duties of, when buying from or selling to parties not members, Rule 13..... 41
Mutual agreement as to receipt and delivery, Rule 22.... 43

Payment, when due, Rule 3 ..... 35
Patching uncompressed cotton, Rule 9 ..... 39
Reclamations, form in which must be presented, Rule 17 .. 42
Reclamations, arbitrations on, Rule 19 ..... 43
Reclamations, limit of time for presenting, Rule 18 ..... 43
Reclamations on false packed cotton stored in New Orleans, Rule 20 ..... 43
Re-weigher, absence of buyer's, procedure, Rule 14 ..... 41
Seller's right when cotton not received, Rule 2 ..... 35
Sampling, Inspecting and Classing, Rule 4 ..... 36–37
Scales, testing of, Rule 15 ..... 42
Tare, how ascertained, Rule 8 ..... 39
Ties, number and weight of, Rule 8 ..... 38–39
Weighing through Exchange, Rule 14 ..... 41
Weighers, duties of Factor's and Buyer's, Rule 14 ..... 41–42
Weighing by seller, Rule 14 ..... 41–42

**Spot Quotations, Committee on:**
By-Laws, Article VII; General Rule 16 ..... 23–155

**Spot Quotations:**
By-Laws, Article VII; Future Rule 15; General Rule 16 ... 23–80–155

**Stained Cotton:**
General Rule 16 ..... 156

**Standards of Classification:**
By-Laws, Article VII; Future Rules 8-10-15-39 .... 23–70–72–80–106

**Standard of Compressing:**
Bands on bales, Rule 1 ..... 185
Bales must be completely covered, Rule 7 ..... 186
Basis of freight engagement, Rule 7 ..... 186
Bagging, insufficient, Rule 7 ..... 187
Certificates to be under oath, Rule 5 ..... 185
Condemnation certificate, when shipper must accept, Rule 5 186
Certificates to show shipping marks, etc., Rule 7 ..... 186
Cotton remarked in New Orleans, Rule 6 ..... 186
Clauses descriptive of bales, Rule 7 ..... 186
Durably marked, bales must be, Rule 7 ..... 187
Freight engagement, basis of, Rule 7 ..... 186
Hand-tied bales, Rule 4 ..... 185
Inspectors to be sworn, Rule 5 ..... 185
Measurement of bales, Rule 2 ..... 185
Pickery bales, or bales with less than six bands, Rule 3 .. 185
Rights of shippers where cotton is condemned, Rule 5 .... 185
Shipper, when must accept certificate of condemnation, Rule 5 ..... 185
Standard size gin boxes, Rule 7 ..... 186
Standard of compressing, Rule 7 ..... 187

**Staple:**
Appeal on, Future Rule 14 ..... 77
Guarantee of, Future Rule 14 ..... 77
Maximum value allowed on future contracts, Future Rule 14 ..... 77
Minimum length deliverable, Future Rule 14 ..... 77
Perished or immature, Future Rule 17 ..... 84
Samples of, when drawn from both sides, Spot Rule 4 ..... 36

**Storage of Certificated Cotton:**
Future Rules 4-30 ..... 68–101

**Substitution of Names:**
Future Rules 26-50 ..... 97–120

**Superintendent:**
Duties of, Future Rules 10-13-14-22-23-25-28-29-35-41-45-47-48-50-51-52-53-56-57-58-60-61-62-65-66; C. L. R. 7-2, pages 72–73–77–78–79–91–92–95–96–98–100–105–107–109–110–112–115–117–120–121–122–123–124–125–127–128–131–132
General Rules 4-7-8-9.....
Rules of Order.....149–150–151
Press Supervision Rule 14..... 163
**Supervision in Presses:** 172
Annual election of Supervisors, Rule 1..... 167
Assistant Supervisors, assignments and monthly reports, Rule 4.....
Assistant Chief Supervisor, Rule 4..... 168
Assistant Supervisors, duties of, Rule 4..... 168
Brokers' samples..... 169
Buyers' Inspectors, duties of..... 169–170
Baling of loose, Rule 12..... 170
Benefit of Supervision Rules allowed to non-members, conditions of, Rule 17..... 170–171
Chief Supervisor, duties of, Rule 4..... 172
Committee on Supervision and Deliveries, duties of, Rule 3 168
Cutting bands for sampling, Rule 8..... 167
Deliveries on Sunday, extra cost thereof, Rule 15..... 170
Duty of press owners, Rule 19..... 172
Election and term of office of Supervisors, Rule 1..... 173
Factors' samples, Rule 7..... 167
Fees on cotton received and stored in presses, Rule 14... 169
Fees on shipmarked and small numbers sampled for resale, Rule 14..... 171
Fees on cotton delivered from presses by planters' marks, Rule 14.....
Fees on cotton sampled at depots, etc., Rule 14..... 171–172
Junk shops, duties of Supervisors thereto, Rule 11..... 172
Loose made from inspecting, how disposed of, Rule 10... 170
Loose made from sampling, how disposed of, Rule 11.... 170
Loose cotton for types, Rule 13..... 170
Owners' right relating to loose..... 171
President of Exchange, duties and powers of, Rule 2..... 171
Payment of Inspection Fees and charges through brokers, Rule 12..... 167
Samples, brokers', Rule 8..... 180
Samples, how drawn, Rule 9..... 169–170
Samples, factors', Rule 7..... 170
Superintendent of Exchange, duties relative to bills, Rule 14..... 169
Storage room for loose, Rule 18..... 172
Salaries of Chief and Assistants, Rule 6..... 173
Transactions between members and non-members, Rule 16. 169
**Supervision and Deliveries, Committee on:** 172
Complaints, written, of misconduct, shall investigate, Future Rule 4.....
Composition and functions of, Future Rule 6..... 69
Cotton not ready for inspection, Future Rule 16..... 68–69
Levee Inspection, duties of, in relation, Levee Inspection Rule 10..... 81
Licenses, Future Rules 4-6..... 180
Licenses, suspension of, Future Rule 6..... 67–69
69

Oath, shall administer, Future Rule 6..... 69
Secretary of, Future Rule 7..... 70
Supervision, duties of, in relation to, Supervision Rules 3-4-14. . . . . 167–168–172
Storage places, must be recommended by, Future Rule 4.. 68
**Supervisory Committee,** General Rule 13..... 153
Default on contracts, intentional, Future Rule 57..... 127
Failed member, Future Rule 57..... 127
Failed member, re-instatement of, Future Rule 64..... 131
Forced notices of failure, Future Rule 58..... 127
Investigation of affairs of failed members, Future Rule 57 127
Report to Board of Directors, Future Rule 57..... 127
Schedule of failed members, Future Rule 63..... 130
**Suspension:**
Annual dues and assessments, failure to pay, Constitution, Article VI; General Rule 12..... 13–149
Board of Directors, action by, Constitution, Article VIII.. 15
Bucket Shops, for connection with, General Rule 18..... 156
Claim, member failing to file, Future Rule 59..... 128
Commission law, violation of, Future Rule 49..... 113
Failed member, re-instatement of, Future Rule 64..... 131
Misconduct, Constitution, Article VIII..... 14
Omission to file claim, when failure not posted, Future Rules 58-59. . . . . 128
Publishing misstatements, etc., General Rule 18, Sec. 2... 156
Trading after hours, Future Rule 41..... 107–108
Trading in Puts and Calls, Future Rule 41..... 108
Transferable notice, use of fictitious names, Future Rule 23 95
Violations of Constitution, By-Laws, or Rules, Constitution, Article VIII ..... 14
Vote at annual election, suspended member cannot, General Rules 2-3 ..... 149
**Tags,** Future Rules 11-12..... 73–74
**Tare,** Spot Rule 8; F. O. B. Rule 25..... 38–57
**Ties,** (See Bands and Standard of Compressing):
Allowance for extra, Spot Rule 8..... 38
Cutting for sampling, Supervision Rule 8..... 170
Excess of, F. O. B. Rule 26..... 58
Missing, F. O. B. Rule 26..... 58
Number and weight of, Spot Rule 8; F. O. B. Rule 22.. 38–57
Removed for inspection, Future Rule 13, Sec. 4..... 75
**Tinged Cotton:**
Future Rule 17; General Rule 16..... 86–156
**Trading,** (See Offers to Buy and Sell).
**Trading in Current Month:**
When shall cease, Future Rule 24..... 95
**Trading After Hours,** Future Rule 41..... 107
**Trading in Puts and Calls:**
Future Rule 41..... 108
**Trading by Representatives of Members:**
Article XVI By-Laws..... 28
**Transactions, Record of:**
Future Rule 43..... 109
**Transfer of Certificated Cotton:**
Future Rule 30..... 100
**Transferable Notices:**
Accepted on any contract for Future delivery, Future Rule 23. . . . . 94

Fictitious or fraudulent use of names, Future Rule 23..... 94
Form of notice, Future Rule 23..... 93
Holidays, procedure in regard to, By-Laws, Article XVIII; Future Rule 40..... 30–106
Issuance of, not permissible on holidays, Future Rule 40.. 106
Last day of month upon which notices may issue, Future Rule 24..... 95
Office closed, delivery, how made, Future Rules 23-45..... 92–109
Passing of shall not prevent calling margins before day of delivery, Future Rule 52..... 123
Penalty for failure to have demand stamped, Future Rule 25..... 96
Penalty for failure of holder to notify drawer, Future Rule 23..... 94
Prices at which shall be issued, Future Rule 23..... 95
Return of, on delivery of cotton, Future Rule 22..... 90
Settlement of, where warehouse or press receipts and certificates not delivered to receiver, Future Rule 26.... 96–97
Shall be considered 100 bales (50,000 pounds), Future Rule 25..... 96
Short notices, Future Rule 23..... 92
Time of receipt must be indorsed on, Future Rule 23..... 92
Time within which transfer must be made, Future Rule 23 94
Written notification of holding of, Future Rule 23..... 94

**Treasurer of the Exchange:**
Claims on Inspection Fund, Future Rule 34..... 103
Duties of, By-Laws, Article XII; General Rule 15..... 25–155
Inspection and classing charges, Future Rule 29..... 99
Levee Inspection fees, Levee Inspection Rule 10..... 180
Pro tempore, By-Laws, Article III; General Rule 15..... 21–155
Supervision fees, Supervision Rule 14..... 171

**Types** (See Standards of Clasisfication).

**Uncompressed Cotton,** Spot Rule 8; Future Rule 21..... 38–88
Patches on, Spot Rule 8..... 39

**United States Cotton Futures Act:**
F. O. B. Rules 15–21–30; Future Rules 1-2-3-10-12-15-23-27-39.....53-56-59-64-65-67-72-75-80-94-97-106 and Appendix

**Unmerchantable Cotton,** Future Rules 17-28..... 84–98

**Vacancies:**
Board of Directors, Constitution, Article VI; By-Laws, Article XIX..... 5–30
Board of Classers, Future Rule 8..... 71
Committees, General, Rule 14..... 155
Inspectors of Election, Constitution, Article VI; By-Laws, Article I..... 4–19
Spot Quotation Committee, By-Laws, Article VII..... 23

**Verbal Contracts,** Future Rule 1..... 64
Margins may be called, Future Rule 49..... 122

**Vice President,** Charter, Article VI; Constitution, Article III; By-Laws, Articles I-II-III.....4–12–19–20–21

**Violations of By-Laws or Rules,** Constitution, Article VIII..... 14

**Violations of Commission Law,** Future Rule 49..... 113

**Visitors,** General Rules 10-11..... 151

**Voting:**
Annual election, Charter, Article VI; By-Laws, Article I.. 5–19
Annual election, suspended member cannot vote, General Rule 23..... 149

Applications for membership, Constitution, Article V; By-Laws, Article XIII ..... 12–26
By-Laws, amendment of, Constitution, Article X..... 15
Constitution, amendment of, Constitution Article X..... 15
**Warehousemen:**
License, notice of intention to cancel, Future Rule 4..... 68
Licensed, must be, Future Rule 4..... 67
Removal of cotton, shall notify Inspection Bureau of, Future Rule 30..... 101
**Warehouse Receipts** (See also Inspection and Classification):
Delivery made on Saturday, Future Rule 22..... 92
Delivery due on last day of month, Future Rule 24..... 95
Failure to deliver, Future Rule 26..... 97
Indorsed by party in whose favor drawn, Future Rule 22.. 89
Issuance and limitations of, Future Rule 20..... 87
Tenderable before 2 P. M., Future Rule 22..... 91
Transferable notices, Future Rule 23..... 93
Weight notation of on, Future Rule 22..... 90
**Warehouses:**
Certificated cotton shall be stored only, Future Rule 30.... 100
Expense to date of delivery, Future Rule 22, Sec. 3..... 91
Fire in, Future Rule 28..... 98
Licensed, must be, Future Rules 4-6..... 67–69
Port of New Orleans, must be within limits of, Future Rules 1-4..... 63–68
Transfer of certificated cotton, Future Rule 30..... 101
Warehouse, what constitutes one, Future Rule 36..... 105
Withdrawing cotton from, Future Rules 30-33..... 101–103
**Water-Damaged Cotton,** Future Rule 28..... 98
**Water-Packed Cotton,** Spot Rule 16; F. O. B. Rule 11, Future Rule 17..... 42–50–84
**Weighers:**
Cannot be in service of party interested in inspection, Future Rule 16..... 83
Must be licensed, Future Rules 4-6..... 67–69
**Weighing and Re-Weighing:**
Charge for, Future Rule 11..... 74
General provisions, Spot Rule 14; F. O. B. Rule 25; Future Rule 11..... 41–57–74
Loose cotton, Future Rule 35; Supervision Rules 11-12-13..... 104–170–171
Record of Weights, Future Rule 20..... 87
Redrawn samples, Future Rule 38..... 105
Smoke or water damage, Future Rule 28..... 98
**Weight:**
Allowance, Future Rule 22, Sec. 4..... 91
Binding for, how long and subject to allowance, Future Rule 22, Sec. 4..... 91
Deficiency in, Future Rule 26..... 96
Maximum and minimum on Guaranteed Through cotton, F. O. B. Rule 10..... 50
Tare, Spot Rule 8; F. O. B. Rules 22–25..... 38–57
Tare, Spot Rule 8; F. O. B. Rules 22-25..... 38–56

**APPENDIX.**

**United States Cotton Futures Act**..... I–XI

## PRESIDENTS AND VICE-PRESIDENTS OF THE NEW ORLEANS COTTON EXCHANGE SINCE ORGANIZATION.

| | | |
|---|---|---|
| 1871-72..... | E. H. SUMMERS | President |
| | J. H. SCHROEDER | Vice-President |
| 1872-73..... | JOHN PHELPS | President |
| | AD. FRERICHS | Vice-President |
| 1873-74..... | JOHN PHELPS | President |
| | THOS. H. HUNT | Vice-President |
| 1874-75..... | JOHN PHELPS | President |
| | J. B. LAFITTE | Vice-President |
| 1875-76..... | W. C. BLACK | President |
| | T. L. AIREY | Vice-President |
| 1876-77..... | W. C. BLACK | President |
| | E. L. JEANRENAUD | Vice-President |
| 1877-78..... | PERRY NUGENT | President |
| | E. L. JEANRENAUD | Vice-President |
| 1878-79..... | PERRY NUGENT | President |
| | WM. CUNNINGHAM | Vice-President |
| 1879-80..... | WM. CUNNINGHAM | President |
| | VICTOR MEYER | Vice-President |
| 1880-81..... | T. L. AIREY | President |
| | A. J. R. LANDAUER | Vice-President |
| 1881-82..... | T. L. AIREY | President |
| | A. J. R. LANDAUER | Vice-President |
| 1882-83..... | JOHN PHELPS | President |
| | GILBERT H. GREEN | Vice-President |
| 1883-84..... | CHAS. E. BLACK | President |
| | E. ALLGEYER | Vice-President |
| 1884-85..... | CHAS. E. BLACK | President |
| | P. POUTZ, SR. | Vice-President |
| 1885-86..... | R. M. WALMSLEY | President |
| | L. T. TURNER | Vice-President |
| 1886-87..... | R. M. WALMSLEY | President |
| | L. T. TURNER | Vice-President |
| 1887-88..... | R. M. WALMSLEY | President |
| | L. T. TURNER | Vice-President |
| 1888-89..... | S. O. THOMAS | President |
| | CHAS. CHAFFE | Vice-President |
| 1889-90..... | CHAS. CHAFFE | President |
| | E. OVERBECK | Vice-President |
| 1890-91..... | CHAS. CHAFFE | President |
| | E. OVERBECK | Vice-President |
| 1891-92..... | WALTER C. FLOWER | President |
| | E. OVERBECK | Vice-President |

| | | |
|---|---|---|
| 1892-93 | WALTER C. FLOWER | President |
| | E. OVERBECK | Vice-President |
| 1893-94 | JOHN W. LABOUISSE | President |
| | ANDREW STEWART | Vice-President |
| 1894-95 | ANDREW STEWART | President |
| | FELIX COUTURIE | Vice-President |
| 1895-96 | ANDREW STEWART | President |
| | FELIX COUTURIE | Vice-President |
| 1896-97 | FELIX COUTURIE | President |
| | JNO. M. PARKER | Vice-President |
| 1897-98 | FELIX COUTURIE | President |
| | JNO. M. PARKER | Vice-President |
| 1898-99 | JNO. M. PARKER | President |
| | C. H. MINGE | Vice-President |
| 1899-1900 | JNO. M. PARKER | President |
| | C. H. MINGE | Vice-President |
| 1900-01 | S. P. WALMSLEY | President |
| | E. BORNEMANN | Vice-President |
| 1901-02 | S. P. WALMSLEY | President |
| | S. WEIS | Vice-President |
| 1902-03 | A. BRITTIN | President |
| | M. E. DuQUESNAY | Vice-President |
| 1903-04 | A. BRITTIN | President |
| | M. E. DuQUESNAY | Vice-President |
| 1904-05 | A. BRITTIN | President |
| | M. E. DuQUESNAY | Vice-President |
| 1905-06 | WM. MASON SMITH | President |
| | WM. T. HARDIE | Vice-President |
| 1906-07 | WM. MASON SMITH | President |
| | WM. T. HARDIE | Vice-President |
| 1907-08 | W. B. THOMPSON | President |
| | JOHN F. CLARK | Vice-President |
| 1808-09 | W. B. THOMPSON | President |
| | JOHN F. CLARK | Vice-President |
| 1909-10 | W. B. THOMPSON | President |
| | E. J. GLENNY | Vice-President |
| 1910-11 | W. B. THOMPSON | President |
| | E. J. GLENNY | Vice-President |
| 1911-12 | E. J. GLENNY | President |
| | W. P. STEWART | Vice-President |
| 1912-13 | E. J. GLENNY | President |
| | W. P. STEWART | Vice-President |
| 1913-14 | E. J. GLENNY | President |
| | W. P. STEWART | Vice-President |
| 1914-15 | E. J. GLENNY | President |
| | W. P. STEWART | Vice-President |
| 1915-16 | W. P. STEWART | President |
| | C. B. THORN | Vice-President |

# CHARTER

UNITED STATES OF AMERICA,
STATE OF LOUISIANA,
CITY OF NEW ORLEANS.

*Be It Known,* That on this fifth (5th) day of the month of May, of the year of our Lord one thousand eight hundred and ninety-eight (1898) and of the Independence of the United States of America, the one hundred and twenty-second:

Before me, JOHN G. EUSTIS, a Notary Public, duly commissioned and qualified in and for the Parish of Orleans, State of Louisiana, and in the presence of the witnesses hereinafter named and undersigned:

Personally came and appeared, Felix Couturie, President, and Henry G. Hester, Secretary, of the New Orleans Cotton Exchange, a corporation domiciled in the City of New Orleans, created under the laws of the State of Louisiana, by Act passed before me, JOHN G. EUSTIS, a Notary Public, in this city, on the 6th day of May, 1873, recorded in the Mortgage Office of this Parish in Book 89, Folios 135, 136, 137 and 138, on the 7th day of May, 1873, which was amended by three Acts passed before the undersigned Notary in this city on the 21st day of January, 1880, recorded in the Mortgage Office of this Parish in Book 152, Folio 367, on the 21st day of January, 1880, one on January 18th, 1889, recorded, Book 353, Folio 693, and the other before the undersigned Notary Public in this city on the 27th of April, 1897, recorded in the Mortgage Office of this Parish in Book 565, Folio 782, on the 27th day of April, 1897, herein

acting under and by virtue of resolutions adopted at a general meeting of the stockholders of said New Orleans Cotton Exchange held on the 5th day of May, 1898, a certified copy of which resolutions is annexed in the margin of this Act for refreence.

Who declared, That in accordance with a notice issued by the President of the New Orleans Cotton Exchange, dated at New Orleans, La., on the 4th day of April, 1898, ordering a meeting of the stockholders of said corporation to be held on the 5th day of the month of May, 1898, for the purpose of passing upon an amendment to Article One of the Charter of said corporation, and also upon such other matters as might be laid before it, or brought up at said meeting; that in compliance with the provisions contained in said Charter, after thirty days' notice in two of the newspapers published in the City of New Orleans, to-wit: The *Times-Democrat* and the *Daily Picayune,* a meeting of the stockholders of said corporation was held on the 5th day of the month of May, 1898, and after all the formalities of the laws of this State and the Charter of this corporation had been complied with, all of the stockholders of said New Orleans Cotton Exchange, present and represented at said meeting, unanimously voted to revise and amend the original Charter of said corporation and Acts amending same, as hereinafter expressed.

Now, therefore, in order to carry out the objects and purposes of said stockholders' meeting, evidenced by said certified copy of said resolutions adopted at said meeting, which are hereunto annexed for reference, and, in order to clothe the same in proper form and give it legal force and effect, the above named appearers do hereby formally declare, publish and make known, that the original Charter, executed before the undersigned Notary, on May 6th, 1873, and amended by three Acts passed, one before the undersigned Notary on January 21st, 1880 and January 18th, 1889, and the other on April 27th, 1897, have been modified, revised, changed, amended, ratified and readopted so as to read as follows:

## ARTICLE I.

The corporate name and title of this Association shall be THE NEW ORLEANS COTTON EXCHANGE, by which it shall be known, as well as sue and be sued; its term of existence is hereby extended for fifty years from this date unless sooner dissolved, as hereinafter provided for, and its domicile shall be and is hereby fixed in the City of New Orleans.

## ARTICLE II.

The purposes of this Association shall be to provide and maintain suitable rooms for a Cotton and Commercial Exchange in the City of New Orleans, to adjust controversies between its members, to establish just and equitable principles, uniform usages, rules and regulations, and standards for classifications which shall govern all transactions connected with the cotton trade or any other articles of trade between its members; to acquire, preserve and disseminate information connected therewith; to decrease the risk incident thereto, and to generally promote the interests of the trade, and increase the facilities and the amount of the cotton and other business in the City of New Orleans. The President of the Association shall be the proper person on whom to serve all citations or all other legal documents or writs in all suits against the Association.

## ARTICLE III.

The capital stock of said Association shall be One Hundred Thousand Dollars ($100,000) divided into Five Hundred (500) shares of Two Hundred Dollars ($200) each, which shares shall be paid in cash or in installments, as required by the Board of Directors, who may, from time to time, fix the price at which shares of stock belonging to this Association shall be sold, which

price shall in no case be less than Two Hundred Dollars ($200) per share; all certificates of stock shall be for Two Hundred Dollars ($200) each, and shall be signed by the President and countersigned by the Treasurer.

## ARTICLE IV.

Every member of this Association shall be required to be the holder of at least one share of the capital stock of this Association, and membership of this Association once acquired can only be terminated by means of resignation, duly accepted by the Board of Directors, by being dropped from the rolls by the Board of Directors, by expulsion, or by death.

## ARTICLE V.

The ownership of one or more shares of the capital stock of this Association shall not confer upon the holder thereof any of the rights or privileges of membership.

## ARTICLE VI.

All the powers of the Association are vested in and shall be exercised by a President, Vice-President, Treasurer and Twelve (12) members, who, together, shall constitute a Board of Directors to be elected annually, on the first Monday of December in each year, at the office of said Association, between the hours of ten (10) o'clock A. M., and two (2) o'clock P. M.; and the present Officers and Directors of said Association as now constituted, shall be the Officers and Directors of said Corporation until the first Monday in December next, and until others, under the provisions of this Act, shall be elected in their place; the Board of Directors shall appoint three (3) members to preside as Inspectors of Election, and should any of the Inspectors decline or fail to attend, the

President shall appoint other persons to fill the vacancies, and any failure from any cause whatever to elect Directors on the day named for that purpose, shall not dissolve this Corporation, but the Officers and Directors then in office shall hold over until their successors are elected; in the event of no election taking place on the date aforesaid, the President shall cause another election to be held within thirty (30) days thereafter, and ten days' notice of the same shall be posted in the Exchange rooms.

Each member shall be entitled to one vote in person (or by special power of attorney given to some member of the Exchange) by ballot, and a majority of votes cast at such election shall elect the person for whom they shall have been given. The Board of Directors thus elected shall enter upon the duties of their office on the first Wednesday succeeding their election, and shall continue in office until their successors are elected and qualified. The Board of Directors shall have the entire control and management of the Asscoiation, with power to hire or lease, and fit up such rooms as may be required for the purposes of the Exchange, and to appoint a Secretary and such subordinate officers and employees, with such salaries as they may deem necessary.

The said Board shall have full authority to fill all vacancies in their number from among the members of the Association, and is hereby invested with full power to frame and adopt such rules and regulations as they may deem requisite and necessary for the Association and the transaction of its business; provided, the same do not conflict with this Act of Incorporation, the laws of this State, or with the Constitution or By-Laws of said Association; they shall also have power and are hereby authorized to buy real estate and erect buildings for the use and purposes of the Association, to sell the same; to make contracts, leases, mortgages and compromises, to borrow money and issue bonds, and to do all and singular, such acts as may be necessary to carry on the business and further the objects of said Association.

## ARTICLE VII.

The liquidation of the affairs of the said corporation shall be made by three (3) commissioners, elected by the stockholders, at a meeting convened for that purpose, after thirty days' previous notice in two newspapers published in the City of New Orleans. Each of said commissioners shall be a citizen of this State, and not indebted to the Association, and at such meeting, the stockholders may cede to such Commissioners all powers necessary to the liquidation of the affairs of the Corporation, may fix their term of office, limit the period of liquidation, fix their compensation, define their duties and the manner in which they may be removed or their term of office renewed.

## ARTICLE VIII.

It shall be lawful for the stockholders of said Association, at a general meeting convened for that purpose, after notice as required by "Article Seventh," to make any modifications, additions or changes in the present Act of Incorporation, or to dissolve it with the assent of three-fourths of the stock represented at such meeting, and any such modification, addition, change or dissolution, shall be recorded as required by law.

## ARTICLE IX.

The said Association shall have a Seal with such a device upon the same as the Board of Directors may adopt.

## ARTICLE X.

No stockholder shall ever be held liable or responsible for the contracts or faults of the Association, beyond the amount of his stock therein.

## ARTICLE XI.

The following named stockholders shall constitute the Board of Directors and shall hold their seats until their successors shall have been elected and qualified, in accordance with Article Sixth:

FELIX COUTURIE, *President.*
JOHN M. PARKER, *Vice-President.*
J. G. DUNCAN, *Treasurer.*

| | | |
|---|---|---|
| JAS. LEA MCLEAN, | S. HYMAN, | NORMAN EUSTIS, |
| C. L. DEFUENTES, | MAURICE STERN, | H. R. LABOUISSE, |
| C. H. MINGE, | S. WEIS, | H. DESSOMMES, |
| E. BORNEMANN, | W. F. PINCKARD, | A. C. ZIEGLER. |

Thus done and passed at my office, in the City of New Orleans, in the presence of Messrs. Louis Henry and Daniel S. Kelly, competent witnesses, residing in this city, who have signed the present Act, with the aforenamed appearers and me, Notary, on the day, month and year first above written, and after due reading.

[Signed] FELIX COUTURIE, *President*
HENRY G. HESTER, *Secretary.*

Witnesses:

DANIEL S. KELLY,
LOUIS HENRY.

J. G. EUSTIS, *Notary Public.*

I, the undersigned, Recorder of Mortgages in and for the Parish of Orleans, State of Louisiana, do hereby certify that the above and foregoing Act of Amendment to the Act of Incorporation of the NEW ORLEANS COTTON EXCHANGE, of New Orleans, Louisiana, was this day duly recorded in my office, in Book 600, Folio 621.

*New Orleans, La., May Sixth, 1898.*

[Signed] GEORGE GUINAULT, *D. R.*

A true copy.

[Signed)] J. G. EUSTIS, *Notary Public.*

# CONSTITUTION.

# CONSTITUTION

OF THE

# New Orleans Cotton Exchange

ADOPTED JANUARY 24, 1871,
WITH ALL REVISIONS UP TO DECEMBER, 31, 1915.

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## ARTICLE I.

### TITLE.

The title of this Association shall be THE NEW ORLEANS COTTON EXCHANGE.

## ARTICLE II.

### PURPOSES.

The purposes of this Association shall be to provide and maintain suitable rooms for a cotton and Commercial Exchange, in the City of New Orleans; to adjust controversies between members; to establish just and equitable principles, uniform usages, rules and regulations, and standards for classification, all of which shall be for the government of transactions in cotton or other articles or matters of trade between members; to acquire, preserve and disseminate information connected therewith; to decrease the risks incident thereto, and generally to promote the interests of the trade and the amount of the cotton and other business in the City of New Orleans.

## ARTICLE III.

### OFFICERS.

The Board of Directors of this Association shall consist of a President, Vice-President, Treasurer, and twelve Directors, all of whom shall be elected annually on the first Monday in December.

## ARTICLE IV.

### QUALIFICATIONS FOR MEMBRSHIP.

SECTION 1. All persons legally of age and of good character and commercial standing, whether resident or non-resident of New Orleans, may be elected members of this Association.

### QUALIFICATIONS FOR VISITING MEMBERSHIP.

SEC. 2. A card of admission, as visiting member to the Exchange rooms, may be issued to any person not engaged in the cotton trade, on the recommendation of the Committee on Membership and the approval of the Board of Directors, upon the payment by such person of the regular dues of the Exchange; provided, that such person shall be subject to all the provisions of the Constitution, By-Laws and rules which apply to members, and may be required to withdraw from the privileges of the Exchange, for cause, at the written request of five members; said request to be subject to the approval of the Board of Directors; and provided further, that such visiting members shall not be allowed to vote or attend executive sessions of the Exchange.

## ARTICLE V.

### ADMISSION OF MEMBERS.

Applicants for membership shall be balloted for, after being recommended by the Committee on Membership and approved by the majority of the Board of Directors, under conditions prescribed by the By-Laws.

At a general Meeting of the New Orleans Cotton Exchange held November 2nd, 1916, the following amendment to Article VI of the Constitution was adopted.

ARTICLE VI, page 13.—Expunge Section 1 of Article VI of the Constitution and substitute the following as Section 1:

"The initiation fee shall be five hundred (500) dollars; and the annual dues one hundred and twenty-five (125) dollars, payable between the first and twenty-fifth days of November; and no member whose dues are not paid by the latter date shall be entitled to admission to the Exchange rooms until same shall have been paid in full; provided, that any member who shall have failed to pay his dues for the space of one year shall forfeit his membership, and can only regain admission by going through the same course and paying the same initiation fees and dues as are now or may hereafter be prescribed in case of new members; provided further, that any person elected a member of the Exchange after the first of March shall pay his subscription at the rate of twelve (12) dollars per month for the unexpired portion of the year."

The Article as amended to read as follows:

## ARTICLE VI.

### INITIATION FEE, ANNUAL DUES, ETC.

SECTION 1. The initiation fee shall be five hundred (500) dollars; and the annual dues one hundred and twenty-five (125) dollars, payable between the first and twenty-fifth days of November; and no member whose dues are not paid by the latter date shall be entitled to admission to the Exchange rooms until same shall have been paid in full; provided, that any member who shall have failed to pay his dues for the space of one year shall forfeit his membership, and can only regain admission by going through the same course and paying the same initiation fees and dues as are now or may hereafter be prescribed in case of new members; provided further, that any person elected a member of the Exchange after the first of March shall pay his subscription at the rate of twelve (12) dollars per month for the unexpired portion of the year.

SEC. 2. Any member failing to pay any fines, dues or awards imposed or made by the Board of Directors, or any Committee having the requisite authority, after being served with notice thereof, shall be suspended from all the rights and privileges of membership and excluded from the Exchange rooms until same shall have been paid in full, and the Board of Directors may, in their discretion, by resolution by a majority of the whole Board, declare his membership at an end and cause his name to be erased from the roll of membership.

## ARTICLE VI.

### INITIATION FEE, ANNUAL DUES, ETC.

SECTION 1. The initiation fee shall be Two Hundred (200) Dollars, and the annual dues One Hundred (100) Dollars, payable between the first and twenty-fifth days of November; and no member whose dues are not paid by the latter date shall be entitled to admission to the Exchange rooms until same shall have been paid in full; provided, that any member who shall have failed to pay his dues for the space of one year shall forfeit his membership, and can only regain admission by going through the same course and paying same initiation fees and dues as are now or may hereafter be prescribed in case of new members; provided further, that any person elected a member of the Exchange after the first of March shall pay his subscription at the rate of Ten (10) Dollars per month for the unexpired portion of the year.

SEC. 2. Any member failing to pay any fines, dues or awards imposed or made by the Board of Directors, or any Committee having the requisite authority, after being served with notice thereof, shall be suspended from all the rights and privileges of membership and excluded from the Exchange rooms until same shall have been paid in full, and the Board of Directors may, in their discretion, by resolution by a majority of the whole Board, declare his membership at an end and cause his name to be erased from the roll of membership.

## ARTICLE VII.

### DUTIES OF MEMBERS.

Every member, upon signing the Constitution, pledges himself to abide by the same, and also by all By-Laws, Rules and regulations of the Exchange.

## ARTICLE VIII.

### RESIGNATION, SUSPENSION OR EXPULSION OF MEMBERS.

Resignations shall be in writing addressed to the Board of Directors, and to be effective must be accepted by the Board. The sale or transfer by a member of his only share of stock shall be equivalent to his tendering a formal written resignation to the Board of Directors.

Should any member tender his resignation, either in writing or by transfer of his only share of stock, while he is in arrears for any fines, dues or awards made or imposed by the Board of Directors, or any committee having requisite authority, or while under investigation for charges before the Committee on Membership, it shall be competent for the Board at any meeting subsequent to accept such resignation and, by a vote of a majority of the members present at such meeting, declare that the member resigned while in bad standing, or to refuse to accept such resignation, and to deal with the party as hereinafter provided, the same as if no such resignation had been tendered or transfer of stock made, and any declaration or action by the Board of Directors in reference to such party shall be posted conspicuously in the Exchange rooms, and any party so posted shall not again be admitted to membership until after compliance with the provisions of Article IX of the Constitution relating to re-admission of expelled members.

Any member of this Exchange who shall be accused of wilfully violating the Constitution, By-Laws or Rules, or of fraudulent breach of contract, or of any proceeding inconsistent with just and equitable principles of trade, or of any other misconduct (with members or non-members of this Exchange) may, on complaint, be summoned before the Committee on Membership, when, if desired, he shall be heard in his defense, and if the charge or charges against him be, in the opinion of the Committee, substantiated, the com-

plaint shall be referred to the Board of Directors, who may, by a vote of not less than two-thirds (2/3) of the entire membership of the Board, suspend or expel him from the Exchnage.

## ARTICLE IX.

### RE-ADMISSION OF EXPELLED MEMBERS.

Expelled members desiring re-admission to the Exchange must have their applications acted upon by the Committee on Membership, and the Board of Directors as in the case of new members. Seven-eighths (7/8) of the votes cast shall be necessary to reinstate expelled members.

## ARTICLE X.

### AMENDMENTS.

Amendments to the Constitution or By-Laws must be proposed in writing by twenty-five (25) members, and the proposed amendments posted in the Exchange rooms for ten days, after which the President shall call a general meeting for the purpose of considering their acceptance or rejection; a vote of three-fourths of the members present being necessary to ratify the amendment. No changes shall be made in the Constitution or By-Laws between the 1st of May and the 1st of November.

# BY-LAWS.

# BY-LAWS

## ARTICLE I.

### ELECTION OF OFFICERS AND DIRECTORS.

SECTION 1. The property and funds of the Association shall be managed and held in trust for the Association by the Board of Directors, which Board shall consist of the President, Vice-President, Treasurer and the Directors elected.

SEC. 2. It shall be the duty of the Board of Directors to appoint three Inspectors of Election not less than five days previous to the election, and ten days' notice of the election shall be posted in the Exchange rooms. Should any of the Inspectors of Election decline or fail to attend, the President shall appoint other persons to fill the vacancies; and, in case of failure to elect Directors on the day named for that purpose, the Officers and Directors then in office shall hold over until their successors are elected. Polls shall be open from 10 A. M. to 2 P. M., in the rooms of the Exchange. Each member shall be entitled to one vote in person (or by written power of attorney given to any member) by ballot; a majority of votes shall elect the persons for whom they shall have been given.

SEC. 3. The Board of Directors shall enter upon the duties of their office on the first Wednesday succeeding their election, and shall continue in office until the first Wednesday followng the election of their successors. In the event of no election taking place on the date aforesaid, the President shall cause another election to be held within thirty days thereafter, and ten days' notice of the same shall be posted in the Exchange rooms.

SEC. 4. At their last regular monthly meeting preceding the annual election in each year, the President and Board of Directors

shall appoint a Nominating Committee consisting of (11) eleven members of the Exchange, none of whom shall be members of the then Board of Directors. It shall be the duty of this Committee to present candidates for all offices to be filled at the next succeeding annual election. In addition to the nominations presented by the Nominating Committee, independent nominations for any office may be made by any member of the Exchange. The names of all candidates presented by the Nominating Committee, with the respective offices for which they are nominated, shall be posted on the bulletin of the Exchange for at least ten days prior to the election; the names of the candidates independently nominated shall be similarly posted for at least five days prior to the election.

## ARTICLE II.

### MEETINGS AND EXCHANGE HOURS.

SECTION 1. Meetings of the Board shall be held on the first Wednesday of each month; and the President of the Board may call special meetings when deemed necesary, and shall do so when requested in writing by three members of the Board.

SEC. 2. The President shall also call meetings of the Exchange when ordered by the Board or when requested to do so in writing by twenty-five members of the Exchange, and when present shall preside at all meetings, both of the Exchange and the Board. The President may also call a meeting of the Exchange whenever, in his discretion, he shall deem it necessary. In the absence of the President, the Vice-President shall perform the duties of the President; and in the absence of both, a Chairman *pro tem.* shall be appointed, upon whom shall temporarily devolve all the duties of the President. At a general meeting, not less than fifty members shall constitute a quorum.

SEC. 3. The opening and closing of the Exchange shall be under the exclusive control of the Board of Directors.

## ARTICLE III.

### BOARD OF DIRECTORS.

SECTION 1. The Board of Directors hall have general and entire management of the Association not inconsistent with the Constitution and By-Laws; shall adopt such rules and regulations as they may deem best to carry out the purposes of the Association, and to do and perform all such acts as authorized by the Charter; have power to hire or lease and fit up such rooms as may be required for the purposes of the Exchange, and to appoint the Secretary and such subordinate officers or employes, and with such salaries as they may deem necessary.

They shall also have power to appoint a President *pro tem.* of the Exchange in case of absence of the President and Vice-President, and a Treasurer *pro tem.* in case of absence of the Treasurer.

SEC. 2. They shall, annually, during the month of November, submit to the members a printed statement of the affairs and finances of the Exchange, together with an estimate of expenses for the ensuing year.

SEC. 3. They shall appoint the following committees from the members of the Exchange, at the first meeting of the Board after their election, viz.:

Committee on Membership.

Committeeon Information and Statistics.

Finance Committee, to consist of three members of the Board of Directors.

One or more Committees on Arbitration.

Committee of Appeals.

And from time to time such other committees as they may deem advisable, and define the duties and authority thereof.

## ARTICLE IV.

### ADOPTION AND AMENDMENT OF RULES.

All rules adopted by the Board of Directors shall be in force and be binding upon members and visiting members of the Exchange, and shall govern all cases to which they may be applicable, after they shall have been posted for ten (10) days in the Exchange rooms.

Any alteration of the rules relating to contracts shall be binding on all contracts entered into on and after date of posting same in the Exchange rooms.

## ARTICLE V.

### COMMITTEE ON MEMBERSHIP.

The Committee on Membership shall have charge of all applications for membership, for visiting membership, and for powers of attorney, and of charges against members for improper conduct. And it shall be the duty of said Committee to make such reports and recommendations on the subjects as they may deem for the interest of the Exchange.

## ARTICLE VI.

### COMMITTEE ON INFORMATION AND STATISTICS.

The Committee on Information and Statistics shall have charge of all matters pertaining to supply of newspapers, market reports, telegraphic information, and statistical information for the use of the Exchange; and it shall be the duty of said Committee to organize plans for obtaining early, reliable and regular information affecting the price of cotton from all cotton-producing and all cotton-consuming sections.

All contracts proposed to be made by said Committee for obtaining telegraphic information shall be approved by the Board of Directors.

## ARTICLE VII.

### COMMITTEE ON SPOT QUOTATIONS.

A Committee on Spot Quotations to consist of not less than three (3) members of the Board of Classers shall be appointed annually by the Board of Directors at its first meeting in December, and vacancies in said Committee from any cause shall be filled by the Board of Directors as occasion may require. It shall be the duty of said Committee to meet at such hours as may be designated by the Board of Directors and a majority of the members thereof shall constitute a quorum.

At each daily meeting, the Committee shall establish and announce the quotations for Spot Cotton as sold in this market by factors and others on spot terms which shall show the actual commercial differences between grades in the manner and under the conditions prescribed in the United States Cotton Futures Act, Section 6, and in accordance with such rulings as the Secretary of Agriculture may from time to time promulgate.

Whenever the value of one grade is to be determined from the sale or sales of spot cotton of another grade or grades, such value shall be fixed in accordance with rules and regulations which shall be prescribed for the purpose by the Secretary of Agriculture.

The Committee may at their discretion take into consideration bona fide offers to buy or sell spot cotton and base their quotations accordingly.

All quotations shall be based upon the Standards of this market as adopted by this Exchange and said quotations shall be posted prominently in the Exchange Rooms.

## ARTICLE VIII.

### FINANCE COMMITTEE.

The Finance Committee shall audit all bills, exercise a general supervision over the financial affairs of the Exchange, direct and

control all investments of the funds of the Exchange, and annually audit the accounts of the Treasurer, and report to the Board of Directors monthly.

## ARTICLE IX.

### ARBITRATION COMMITTEE.

An Arbitration Committee, to consist of nine members, to be appointed annually by the Board of Directors, at their first meeting, for the purpose of hearing and deciding claims of members against each other, arising from transactions in spot, future contracts and free on board cotton. Said Committee shall have the settlement of all such claims (subject only to the right of appeal to the Committee of Appeals, which appeal shall be made within three business days after receipt of the decision of the Arbitrators), excepting such as may arise from questions of classification of cotton, which shall be determined by a committee or committees of experts, to be appointed in such manner as the Board of Directors may see fit.

Each arbitrator acting on any one case shall be paid Five ($5) Dollars for such case, and the arbitrators in the award shall decide by whom the expenses of the arbitration shall be paid.

In addition to the above, the Board of Directors shall have power to appoint, from time to time, such additional Arbitration Committees as they may deem advisable.

## ARTICLE X.

### COMMITTEE OF APPEALS.

A Committee of Appeals shall be appointed by the Board of Directors and shall consist of seven (7) members of the Exchange, five (5) of whom shall constitute a quorum for the purpose of hearing and deciding such matters arising from transactions in spot, future contract and free on board cotton as may be submitted to

them on appeal from decision of the Arbitration Committee authorized under the first paragraph of Article 9 of the By-Laws.

All expenses attending such appeal, unless otherwise decided by said Appeal Committee, shall be borne by the party whose claim differs most from the final award, including costs of arbitration appealed from, and a fee of Five ($5) Dollars for each member of said Appeal Committee acting on such appeal.

The Board of Directors may by rule provide for such other Appeal Committees on matter not appertaining to cotton as it may deem fit to appoint in connection with arbitrations on such matters.

## ARTICLE XI.

### THE SECRETARY.

The Secretary shall keep accurate minutes of the meetings of the Exchange and the Board; he shall cause notice to be posted on the bulletins, and otherwise, as may be directed by the President or the Board, of all meetings of the Exchange, and give notice in writing of all the meetings of the Board.

## ARTICLE XII.

### THE TREASURER.

The Treasurer shall give bond, with security, for such amount as the Board of Directors may require.

He shall receive all funds belonging or payable to the Exchange and deposit them in the bank in the name of THE NEW ORLEANS COTTON EXCHANGE. All checks shall be signed by the Treasurer and countersigned by the President or Acting President.

He shall pay all bills against the Exchange when certified by the Finance Committee or authorized by the Board; he shall have custody of the corporate seal; he shall keep an account of all receipts and disbursements in a book to be kept for that purpose,

subject at all times to the examination of the Finance Committee and the Board of Directors; he shall render a report at each regular meeting of the Board, and a general annual report at the close of each year; and at the expiration of his term of office he shall transfer to his successor all funds, books, papers and other property of the Exchange in his possession.

## ARTICLE XIII.

### APPLICATIONS FOR MEMBERSHIP.

All applications for membership must be made to the Committee on Membership, and such as are recommended by the Committee shall be submitted to the Board of Directors, and such as are recommended by the Board of Directors shall be posted at the general meeting-room of the Exchange for ten days before being balloted for, with notice of the time at which such balloting will take place. The balloting shall be at the general Exchange rooms, and election day shall be every Wednesday. The polls shall be opened at 10 o'clock A. M., and close at 4 P. M. Each elector shall cast one ballot—if in favor of the candidate, the word "yes"; if against, the word "no," written or printed thereon. Three-fourths (¾) of the whole number of votes cast shall be required in favor of applicants to entitle them to membership. The Superintendent of Exchange, or his assistant, shall act as teller, and register the names of voters as polled. Two members of the Board of Directors or any of the sub-committees, shall be present at the counting of the votes cast, and they shall post the result over their signatures, on the bulletin of the Exchange, with reasonable dispatch. No name, after being rejected, shall be again proposed within six months after such rejection, except upon the written application of fifty members in good standing; and upon receipt of such application the Board of Directors shall, within a period of ten days thereafter, order a second ballot to be taken; and, in case of a second rejection, said

name cannot be proposed within twelve months of such rejection. Each member shall, within ten days after receiving notice of his election, sign the Constitution and pay to the Treasurer the annual dues, as provided in the Constitution.

## ARTICLE XIV.

### SETTLEMENT OF CLAIMS OF MEMBERS.

All claims, disputes, differences and controversies between members of the Exchange, arising out of any transaction in spot, future delivery or free on board cotton, shall be subjects of and determined by arbitration, if notice in writing of such claim, dispute, difference or controversy, and of the intention to demand an arbitartion thereon, be served by either party upon the opposite party or parties thereto within ten (10) days from the discovery thereof, but not otherwise. The Superintendent of the Exchange shall draw by lot three members from among the nine members of the Arbitration Committee to serve in each case submitted for arbitration, who shall hear and determine the matter at issue. No member of the Committee who may be interested etiher as principal or broker in any case submitted for arbitration shall be competent to serve on such case; provided, that any party litigant shall be entitled to demand that the entire Committee shall act upon the case at issue. The decision of this Committee shall be binding, subject only to an appeal to the Appeal Commtitee, which appeal shall be made within three (3) business days after notice has been given of such decision, accompanied by a certified copy of same.

All claims, disputes, differences and controversies between members of the Exchange arising out of transactions other than in cotton within the scope of Article II of the Constitution, shall be subjects of and determined by arbitration before such committees and in such manner as may be determined upon by rules adopted by the Board of Directors.

## ARTICLE XV.

### COMPLAINTS OF MEMBERS.

SECTION 1. If complaint is made against a member under Article VIII of the Constitution, it must be in writing, addressed to the Committee on Membership, specifying the particular act complained of, together with all the documentary evidence bearing on the case, and a list of names of witnesses whom he may desire to be examined on said complaint. The Chairman of the Committee shall cause copies to be served on the member complained of; and it shall be the duty of the said member, within five days of the receipt of the same, to return them to the Committee with his written answer to the complaint, and all documents bearing on the case in his possession, with the names of witnesses whom he desires shall be summoned. The Chairman shall, as soon as expedient, after receipt of said answer, or, if no answer is received, after the expiration of five days from service of the copies of complaint, notify both parties and the witnesses named, of the time and place at which the Committee will meet to act on said complaint. If, after the examination, the Committee deem the charges substantiated, they shall so report to the Board of Directors, and deliver to the Board all documents relating thereto.

SEC. 2. The Board of Directors may, at their discretion, act upon the documentary evidence, or may call parties or such witnesses as they may desire to examine in the case, before them; but one party shall not be called before the Board of Directors without giving the other party an opportunity of being present at the same time.

## ARTICLE XVI.

### POWERS OF ATTORNEY.

No Power of Attorney shall be granted to any person to do business on the floor of the Exchange for account of any member

or firm, unless such person be a full member of this Exchange, nor can any member be represented in any manner on the floor of the Exchange by any person not a full member.

In case of sickness or absence from the city of a member, he may, by simple written authorization, empower his *bona fide* recognized partner or clerk to visit the Exchange in his stead, for the sole purpose of obtaining news or information.

Any member, upon approval of the Committee on Membership, may obtain admission to the Exchange floor for his *bona fide* clerk or clerks, for the sole purpose of obtaining news or information, by payment, for each clerk, of the same dues as are now or may hereafter be paid by members. It being provided that no party admitted under this clause shall be allowed to transact business in the Exchange, either in his own name or that of his principal; nor shall any power of attorney or clerk, who is not a full member, under any circumstances, transact business on the floor of the Exchange for his own account.

Members paying for admission of clerks under this Article may change their representatives during the period paid for, without additional charge, on approval of the Committee on Membership.

Clerks admitted under this Article shall be subject to all rules of order applicable to members, and the Board of Directors may, at its discretion, require principals to change such Powers of Attorney or clerks representing them on the floor of the Exchange.

## ARTICLE XVII.

### MOTIONS.

No notice shall be taken at any meeting of the Exchange of any resolutions unless submitted in writing.

## ARTICLE XVIII.

### CONTRACTS.

SECTION 1. No contract to be made on 'Change, unless both parties to the same are members of the Exchange.

SEC. 2. All contracts falling due on legal holidays, or such holidays as are prescribed by the By-Laws or ordered by the Exchange, shall be completed on the preceding day, and when notice of five (5) days is required such notice shall be given at least five (5) days previous to the day preceding such holiday.

## ARTICLE XIX.

### VACANCIES.

All vacancies that may occur in the Board of Directors by death, resignation or otherwise, may be filled by the Board at any regular meeting.

## ARTICLE XX.

### COMMITTEE ON CREDITS AND LEGISLATION.

SECTION 1. The Board of Direcotrs shall appoint a "Committee on Credits," to consist of three members, whose duty it shall be to take cognizance of all violations of commercial integrity, honor and good faith, represented to them by members of this Exchange, whether such charges are made against cotton factors, cotton buyers or brokers of the City of New Orleans, or against merchants or planters in the country.

SEC. 2. This Committee shall keep, in a book prepared for that purpose, a record of all such charges as may be made, alphabetically arranged, which book shall at all times be open to the members of this Exchange. It is understood, however, that this Committee has no control over charges made against members of this Exchange,

which charges properly come under the supervision of the Committee on Membership.*

## ARTICLE XXI.

### COMMITTEE ON BOOKS.

The President shall appoint a Committee of two, who shall examine the books of the Exchange, and report to the Board of Directors at their regular meeting in November.

* For other duties of this Committee, see Rule 13, General Rules.

# SPOT RULES.

# SALE AND DELIVERY OF SPOT COTTON.

## RECEIPTS AND PAYMENTS.

### WHEN AGREEMENT TO SELL IS FINAL.

RULE 1. A contract for the sale of cotton shall be deemed final when the price has been agreed upon between the seller and the buyer; provided, in the case of a sale to a broker, the name of the buyer is accepted by the seller.

### LIMIT OF TIME FOR RECEIPT.

## AMENDMENT TO RULE 3 OF THE SPOT RULES.

(Adopted by the Board of Directors May 2nd, 1917; Posted May 3rd, 1917; Effective May 13th, 1917.)

Amend Rule 3 of the Spot Rules by substituting the figures "2:15" for the figure "3" in the third line after the word "than"; and substituting the figures "11:30" for the figure "12" in the fifth line, after the word "by."

The Rule as amended will then read:

### WHEN PAYMENT IS DUE.

RULE 3.—The seller shall present invoice for the cotton not later than 12 M. on the business day following delivery, and payment therefor shall be made by the buyer not later than 2:15 P. M. on the same day; provided, that on Saturdays, the invoice must be presented by 11 A. M., and payment made by 11:30 A. M.; provided further, that the seller shall have the right to demand payment in full before the cotton leaves the warehouse.

# SALE AND DELIVERY OF SPOT COTTON.

## RECEIPTS AND PAYMENTS.

### WHEN AGREEMENT TO SELL IS FINAL.

RULE 1. A contract for the sale of cotton shall be deemed final when the price has been agreed upon between the seller and the buyer; provided, in the case of a sale to a broker, the name of the buyer is accepted by the seller.

### LIMIT OF TIME FOR RECEIPT.

RULE 2. All cotton shall be received within ten running days from and after day of sale if stored in the State-owned Warehouse, and within seven working days, from and after date of sale, if stored in independent warehouses; and if not received within the time herein specified, the seller shall have a right to demand payment of the approximate value of the cotton, and may, after giving due notice in writing to the buyer, proceed to have the cotton weighed and to demand payment in accordance with such weights. In default of prompt payment, the seller shall then have the right to re-sell the cotton for account of the buyer. The seller shall have the right to collect from the buyer any and all charges for extra storage, insurance and interest that may have accrued after the expiration of the time allowed, until the cotton is finally taken either by the buyer or by the party to whom it is sold for buyer's account, as herein provided.

### WHEN PAYMENT IS DUE.

RULE 3. The seller shall present invoice for the cotton not

200



later than 12 M. on the business day following delivery, and payment therefor shall be made by the buyer not later than 3 P. M. on the same day; provided, that on Saturdays, the invoice must be presented by 11 A. M., and payment made by 12 M.; provided further, that the seller shall have the right to demand payment in full before the cotton leaves the warehouse.

INSPECTING, SAMPLING AND CLASSING.

RULE 4. SECTION 1. On written request of the storer, the Cotton Exchange, through its duly licensed and sworn inspectors, will inspect cotton on its arrival and have it sampled in the usual manner by its licensed and sworn sampler. The samples thus drawn shall be divided in two equal parts by the representative of the Exchange by breaking across the layer, one-half of which shall be sent to the storer and the other half retained by the Exchange; provided, that when staple cotton longer than 1⅛ inches is received, the samples shall be drawn from both sides of the bale and inspected in the usual way.

SEC. 2. The New Orleans Cotton Exchange will guarantee the correctness of its inspection, and reserve samples so long as such samples remain in possession of the Exchange and the bales remain stored in warehouses (State-owned or independent) under its jurisdiction.

SEC. 3. When cotton which has been inspected and sampled by the Exchange is sold, the buyer may have the reserve samples exposed for examination by him in the Exchange rooms, and in event of any claims for differences, must notify the seller on the same day. He may call on seller for his samples, which releases seller from all responsibility. If seller's samples are received by the buyer, the reserve samples shall be held by the Exchange until shipment is made and then delivered to original seller; provided,

later than 12 M. on the business day following delivery, and payment therefor shall be made by the buyer not later than 2 P. M. on

## AMENDMENTS TO SECTION 3 OF RULE 4 OF THE SPOT RULES.

(Adopted by the Board of Directors March 7th, 1917; Posted March 7th, 1917; Effective March 17th, 1917.)

Amend Rule 4 of the Spot Rules by striking out the four last words of Section 3, reading:

"When cotton is shipped,"

and substitute therefor the following:

"If he does not resample the cotton."

Add the following as a separate paragraph of said Section:

"Reserve samples shall be removed within 30 days after the cotton has been shipped from the storage place, after which they become the property of the Exchange. On special request the Exchange may hold the samples longer than 30 days.

The Section with the proposed amendments will then read as follows:

Rule 4—Sec. 3—When cotton which has been inspected and sampled by the Exchange is sold, the buyer may have the reserve samples exposed for examination by him in the Exchange rooms, and in event of any claims for differences, must notify the seller on the same day. He may call on seller for his samples, which releases seller from all responsibility. If seller's samples are received by the buyer, the reserve samples shall be held by the Exchange until shipment is made and then delivered to original seller; provided, that should the buyer not call on seller for the samples, the buyer is entitled to the reserve samples if he does not resample the cotton.

Reserve samples shall be removed within 30 days after the cotton has been shipped from the storage place, after which they become the property of the Exchange. On special request the Exchange may hold the samples longer than 30 days.

that should the buyer not call on seller for the samples, the buyer is entitled to the reserve samples when cotton is shipped.

SEC. 4. The New Orleans Cotton Exchange when so requested shall grade or classify the reserve sample, issuing therefor grade or class sheets or certificates of grade or class as may be desired, which shall be guaranteed by the Exchange as the grade or class of the Board of Classers or of the Appeal Committee on Classification, as the case may be, on which certificate such cotton, if for tenderable grades and staple, may be tendered on future contracts on compliance with the Future Rules. Deliveries on contracts for future delivery made under these provisions are subject to the United States Cotton Futures Act.

SEC. 5. The fees for inspecting, classing and grading under the Spot Rules shall be fixed by the Board of Directors, who shall have the Treasurer of the Exchange keep a separate account therefor.

## REJECTIONS, BAGGING AND TIES.

### CAUSES FOR REJECTION.

RULE 5. There shall be no rejections by the buyer on cotton inspected and sampled by the New Orleans Cotton Exchange, if the duplicate sample held by the Exchange is equal to the seller's sample; provided, that the seller must sell as such any or all irregular cotton so reported by the Exchange.

When the bales are inspected and sampled by the seller and not by the New Orleans Cotton Exchange, the buyer shall have the right to reject all seedy, false packed, mixed packed, dusty, sandy, gin-cut, rebaled cotton or cotton of perished staple or immature staple, unless it has been sold as such; also any cotton lower in grade than the lowest grade represented in the seller's samples. No other cotton shall be rejected when equal in quality to the sample by which it has been sold, if the sample has been fairly exhibited.

COMPENSATION FOR GRADES ON AVERAGE PRICE.

RULE 6. Where cotton of various grades, sampled by seller, has been sold at a uniform price, and the rejections are above the average grade of the list, the seller shall make good to the buyer the difference in value between the rejected bales and the average of the list, and where rejections are below the average of the list the buyer shall, in like manner, make good the difference in value to the seller. All such differences to be determined by the original samples of the seller.

LIGHT-WEIGHT BALES.

RULE 7. Any bale of cotton weighing less than three hundred pounds shall be deemed unmerchantable, and may be rejected by the buyer.

NUMBER AND WEIGHT OF TIES.

RULE 8. SECTION 1. Six iron ties not exceeding in weight twelve (12) pounds in the aggregate, shall be considered sufficient for each uncompressed bale of cotton. Any excess shall, at the option of the buyer, be removed from the bale or be deducted from the gross weight. If a bale has less than six ties, allowance shall be made to the seller, the ties to be put on by the press at the expense of the seller.

SEC. 2. Where compressed bales are sold as spot cotton and have seven (7) ties, no deduction is to be made for the seventh tie, and three (3) pounds are to be added to the gross weight of the bale, the same as in the Free on Board Rules.

SEC. 3. When compressed cotton is sold on flat terms, the buyer shall pay the seller the cost of compressing such bales, viz: 40c per bale is compressed in the State-owned Warehouse and 50c per bale if compressed elsewhere.

SEC. 4. Where a bale has more than seven (7) ties, allowance

therefor shall be made by the seller at the rate of 1 3/10 pounds per tie.

SEC. 5. Where uncompressed cotton is received, sampled and inspected by the Cotton Exchange and compressed on arrival, a patch weighing not exceeding three pounds may be put on the bale at the expense of the buyer, and due allowance made on seller's invoice for weight of same.

RULE 9. The amount of bagging used to cover any bale shall not exceed three and nine-sixteenths per cent of the weight of such bale, less the weight of the ties. Due allowance shall be made for any excess.

The actual tare shall be ascertained as follows: When the lot numbers 50, or less, bales, 5 bales; when more than 50, up to 70, inclusive, 7 bales; and more than 70 bales, 10 bales; or more or less, as may be agreed upon, shall be taken indiscriminately, weighed, and then stripped of the bagging. The tare shall be ascertained as follows:

To calculate the allowance, the proportion of excess bagging over the 3 9/16% shall be ascertained on the number of test bales. This proportion of excess, if any, shall then be applied on the gross weight of the entire lot after the weight of ties has been deducted.

EXAMPLE.

| | | |
|---|---|---|
| Given 100 bales weight | | 49,500 lbs. |
| Select 10 bales, weighing, say | 4,860 lbs. | |
| Deduct for ties, 7 at 1 3/10 lbs per bale (F. O. B. Rule 22) | 91 lbs. | |
| Weight of cotton and bagging | 4,769 lbs. | |
| Tare allowed under rule | 169.90, 3 9/16% of | 4,769 lbs. |
| Actual tare (bagging) | 191.53, 4.01% of | 4,769 lbs. |

.45% Excess tare

Weight 100 bales (gross) ..... 49,500 lbs.
Less the ties ..... 910 lbs.
——— lbs.
Weight cotton and bagging ..... 48,590 lbs.

Therefore, the excess tare claim is .45% of 48,590 lbs., or 218.66 lbs.

If the representative of the buyer and seller cannot agree in selecting the bales to be tared, the Chief Supervisor of the New Orleans Cotton Exchange shall appoint some one to make such selection.

If any claim for excess tare be established, the seller shall pay all expenses incurred in making the test; otherwise, the buyer.

#### UNMERCHANTABLE BAGGING.

RULE 10. All bagging which contains substances which may damage or which when wet, will stain cotton, shall be considered unmerchantable; and all cotton covered therewith shall be recovered with merchantable bagging at the expense of the seller.

#### GUARANTEE OF MERCHANTABLE COTTON.

RULE 11. All sales of cotton, unless otherwise provided for at the time of sale, shall be deemed to have been made under a guarantee of its being in merchantable condition and in good order for immediate shipment, the Cotton Exchange weigher to determine the condition of the bale. Buyers shall have the right to reject any cotton delivered in bad order or in a damaged condition, unless it can be put in order within the two days following delivery of the list.

## DELIVERY AND INSPECTION.

#### WHEN DELIVERY IS COMPLETED.

RULE 12. The delivery of cotton shall be deemed to have been completed as it passes the scales, but the seller shall have an insurable interest in same until paid for. In like manner, where pay-

ments on account are made by the buyer prior to actual delivery, he shall be deemed to have an insurable interest in the cotton, and may require from the seller an assignment of his policy of insurance to the extent of such payments.

## DUTIES OF BUYERS, SELLERS AND BROKERS.

### TRANSACTIONS BETWEEN MEMBERS AND NON-MEMBERS.

[illegible] buying cotton

for delivery without the presence of the buyer's re-weigher, unless he shall have first given notice to the buyer's re-weigher, or to the buyer's classer, of his readiness to weigh the same at a time which he shall specify; should the buyer's re-weigher fail to be present at

Weight 100 bales (gross) ..... 49,500 lbs.
Less the ties ..... 910 lbs.
——— lbs.
Weight cotton and bagging ..... 48,590 lbs.

Therefore, the excess tare claim is .45% of 48,590 lbs., or 218.66 lbs.

If the representative of the buyer and seller cannot agree in selecting the bales to be tared, the Chief Supervisor of the New

## AMENDMENT TO RULE 11 OF THE SPOT RULES.

(Adopted by the Board of Directors May 2nd, 1917; Posted May 3rd, 1917; Effective May 13th, 1917.)

Amend Rule 11 of the Spot Rules by insertion in the fourth line after the word "shipment," the words "especially as to at least one space on the top side for remarking."

The Rule as amended will read as follows:

RULE 11.—All sales of cotton, unless otherwise provided for at the time of sale, shall be deemed to have been made under a guarantee of its being in merchantable condition and in good order for immediate shipment, especially as to at least one space on the top side for remarking, the Cotton Exchange weigher to determine the condition of the bale. Buyers shall have the right to reject any cotton delivered in bad order or in a damaged condition, unless it can be put in order within the two days following delivery of the list.

### WHEN DELIVERY IS COMPLETED.

RULE 12. The delivery of cotton shall be deemed to have been completed as it passes the scales, but the seller shall have an insurable interest in same until paid for. In like manner, where pay-

ments on account are made by the buyer prior to actual delivery, he shall be deemed to have an insurable interest in the cotton, and may require from the seller an assignment of his policy of insurance to the extent of such payments.

## DUTIES OF BUYERS, SELLERS AND BROKERS.

### TRANSACTIONS BETWEEN MEMBERS AND NON-MEMBERS.

RULE 13. Members of the Exchange, when purchasing cotton from or selling cotton to parties who are not members, shall stipulate [illegible] governed by the Rules of the

[illegible] weigh the cotton, the seller's weigher [illegible]

for delivery without the presence of the buyer's re-weigher, unless he shall have first given notice to the buyer's re-weigher, or to the buyer's classer, of his readiness to weigh the same at a time which he shall specify; should the buyer's re-weigher fail to be present at

| | |
|---|---|
| Weight 100 bales (gross) | 49,500 lbs. |
| Less the ties | 910 lbs. |
| | ——— lbs. |
| Weight cotton and bagging | 48,590 lbs. |

Therefore, the excess tare claim is .45% of 48,590 lbs., or 218.66 lbs.

If the representative of the buyer and seller cannot agree in selecting the bales to be tared, the Chief Supervisor of the New

## AMENDMENT TO RULE 11 OF THE SPOT RULES.

(Adopted by the Board of Directors May 2nd, 1917; Posted May 3rd, 1917; Effective May 13th, 1917.)

Amend Rule 11 of the Spot Rules by the addition of the following as a new section:

SEC. 2. When the Chief Supervisor, the Assistant Chief Supervisor, or any of the Supervisors of the Exchange are called by parties to determine whether a bale of cotton is not in merchantable condition, a charge of five cents a bale shall be paid to the Exchange by the party differing most from the award.

WHEN DELIVERY IS COMPLETED.

RULE 12. The delivery of cotton shall be deemed to have been completed as it passes the scales, but the seller shall have an insurable interest in same until paid for. In like manner, where pay-

ments on account are made by the buyer prior to actual delivery, he shall be deemed to have an insurable interest in the cotton, and may require from the seller an assignment of his policy of insurance to the extent of such payments.

## DUTIES OF BUYERS, SELLERS AND BROKERS.

### TRANSACTIONS BETWEEN MEMBERS AND NON-MEMBERS.

RULE 13. Members of the Exchange, when purchasing cotton from or selling cotton to parties who are not members, shall stipulate that such purchase or sale shall be governed by the Rules of the Exchange including those relating to supervision and inspection.

Brokers, when purchasing for parties who are not members of the Exchange shall in each instance be required to inform the seller of that fact, and also to give the name of the buyer. In event of this clause not being observed, the broker shall be held responsible, under the Rules, for any infringement thereof that may occur.

## WEIGHING AND RE-WEIGHING.

### DUTIES OF SELLERS' AND BUYERS' WEIGHERS.

RULE 14. Cotton shall be weighed, when required by the seller, by a sworn licensed weigher appointed by the New Orleans Cotton Exchange, who shall represent both the seller and the buyer; provided, that should any allowance be necessary for any cause, a second sworn, licensed weigher shall be appointed; in the event the two weighers cannot agree on the allowance to be made, a third weigher shall be appointed as umpire.

If the Cotton Exchange is not called upon by the seller to weigh the cotton, the seller's weigher shall not weigh any cotton for delivery without the presence of the buyer's re-weigher, unless he shall have first given notice to the buyer's re-weigher, or to the buyer's classer, of his readiness to weigh the same at a time which he shall specify; should the buyer's re-weigher fail to be present at

the time specified in said notice, a further delay of two hours shall be allowed, at the expiration of which time the seller's weigher may proceed with the weighing of the cotton without the presence of the buyer's re-weigher.

TESTING SCALES.

RULE 15. A duly authorized official of the Cotton Exchange shall test weighers' scales as often as necessary and at least once a week.

## RECLAMATIONS.

CLAIMS FOR IRREGULARITIES—FALSELY PACKED COTTON.

RULE 16. After cotton has been examined, received and passed upon by the broker or other agent of the buyer, no claim shall be made upon the seller except for fraudulent or false packing and the allowance provided for in Rule No. 5.

Falsely or fraudulently packed cotton shall be defined as follows: Such bales as may contain any foreign substance, water-packed bales, or bales containing damaged cotton in the interior without any indication of such damage upon the exterior of the bale; also such bales as are plated—*i. e.*, composed of good cotton upon the exterior and decidedly inferior cotton in the interior of the bales, in such manner as not to be detected without opening the same.

FORMS FOR RECLAMATION.

RULE 17. When claims are made they shall be in writing, giving the shipping marks and numbers, also the planter's and all other legible marks; and a separate certificate shall be given for each bale, except where two or more bales bear the same planter's marks. The certificate shall also state the particulars of the fraudulent or false packing, and shall be verified by oath or affirmation.

LIMIT OF TIME.

RULE 18. In all cases where cotton is re-stored and held in this city, such claims shall be good against the seller for 100 days from date of sale, and where the cotton has been exported to a foreign or domestic port the certificate and claim shall be dated within 100 days from the date of the arrival of the vessel carrying such cotton at her port of destination, and presented to the seller here, if from a foreign country within thirty days, and if from an American mill, within ten days from date of claim.

ARBITRATIONS AND RECLAMATIONS.

RULE 19. All claims made out in conformity with the foregoing regulations shall be deemed *prima facie* valid in favor of the claimant, and can only be defeated by a decision of the Committee on Arbitration, or of the Committee of Appeals of the Exchange.

RECLAMATIONS ON COTTON STORED IN NEW ORLEANS.

RULE 20. Cotton bought and held here, if found to be falsely or fraudulently packed, shall be returned within 100 days from date of sale to the seller, who shall pay for the same by the weight, and at the market value of the cotton of the grade shown by the original sample hole, at the time it shall be so returned.

## COMMISSIONS.

ON BUYING AND SELLING.

RULE 21. Commissions for buying and selling shall be such as may be mutually agreed upon.

RULE 22. Nothing in the Spot Rules of the New Orleans Cotton Exchange shall be construed as preventing buyers and sellers from agreeing upon any other method for the delivery and receipt of cotton.

# FREE ON BOARD RULES.

# F. O. B. RULES.

## GENERAL RULES.

### RULE 1.

When cotton is sold to be delivered "free on board" New Orleans the price agreed upon in the contract shall include compressing, freight to New Orleans and drayage from railroad depot or landing to shipside or warehouse, but shall be exclusive of insurance if shipped all rail; freight and drayage to be deducted from invoice and paid for by the buyer.

On cotton sold for examination in New Orleans, one-half of the charge for ranging and sampling shall be deducted from the invoice by seller and the buyer shall pay these charges. Cotton Exchange supervision and levee inspection fees to be paid by the buyer on all f. o. b. cotton.

### RULE 2.

All cotton sold on actual samples shall be at buyer's risk as soon as the terms of sale are agreed upon, provided railroad bill of lading is already signed, or as soon as it is signed thereafter; provided, however, that the documents must be delivered to the buyer; when sold on description it shall be at buyer's risk from the time railroad bill of lading is signed, provided he is given marks and name of shipper by the seller, prior to known loss.

### RULE 3.

When cotton is sold on f. o. b. terms for delivery at New Orleans by or within a certain specified time, *with the condition "barring fire,"* payment for same shall be demanded not more than

ten (10) days prior to the first day on which the cotton may be delivered; on such sales the cotton shall be at buyer's risk from time railroad bill of lading is signed, as provided in Rule 2; but should the cotton not arrive in New Orleans within the time specified, the buyer's risk on such cotton shall not extend beyond such date (except by mutual agreement); and in the event of the seller's replacing such cotton with cotton on the spot, the buyer must subrogate the seller his insurance on the original shipment.

## RULE 4.

When cotton is sold on f. o. b. terms for delivery at New Orleans by or within a certain specified time, *without the condition "barring fire,"* payment for same shall not be due until the arrival of the cotton at New Orleans, and the cotton shall be at the seller's risk until such payment is made.

## RULE 5.

Unless any special time is agreed upon between the buyer and seller, all cotton sold "free on board" shall be shipped from the interior point at which it is purchased within ten (10) days from the date of contract, weather permitting, and barring obstacles over which the interior shipper has no control, due proof of which shall be furnished to the buyer in New Orleans. Failing shipment within the specified time, none of the above mentioned obstacles having been encountered, it then becomes a question of delivery, and the local seller of "free on board" cotton obligates himself to deliver the quantity and quality of cotton sold at ship's side in New Orleans within two (2) weeks of the time at which it should have been shipped. In such case the buyer shall not be compelled to pay the country invoice, but shall pay for the cotton on satisfactory delivery if made within the two weeks specified.

## RULE 6.

Sellers of cotton to be delivered "free on board" shall be responsible in every respect for the proper fulfillment of all contracts, whether the name of the interior shipper be stated in the contract or not.

## RULE 7.

All drafts or invoices for cotton shall be accompanied by the original bills of lading properly endorsed. Not more than four bills of lading to 100 bales of cotton, or this proportion, may be tendered the buyer; should the proportion of bills of lading be more than this, the buyer need not pay for the cotton until the entire lot has arrived and is ready for delivery. When the lot amounts to less than 100 bales, the buyer's responsibility for storage charges shall apply, only, after four working days from receipt of arrival notice of completion of the entire lot. When the lot amounts to 100 bales or more, the buyer's responsibility for storage charges shall apply, only, after four working days from receipt of arrival notice of completed marks aggregating quantities of 100 B/C or more.

Where lots of 100 bales or more are sold, the shipper shall not have the right of invoicing and drawing for less than 100 bales on the same day.

Where invoices for f. o. b. cotton have local warehouse receipts attached instead of bills of lading, the seller must assume storage charges for seven (7) days from date of payment of invoice.

## RULE 8.

When cotton is sold for examination in New Orleans, samples may be demanded by the buyer within five (5) days after delivery of the cotton; and when cotton is sold on guaranteed through terms, samples shall be forwarded by express within four (4) days after

shipment. Failure to comply with the provisions of this Rule shall subject the seller to a penalty of $5 per 100 bales.

## RULE 9.

All allowances awarded in New Orleans shall be promptly paid, and all other undisputed claims shall be paid within fourteen (14) days from date of presentation. Where cotton is weighed, sampled or inspected in New Orleans, all claims shall be presented within ten (10) days after delivery is completed or after arbitration is settled.

## RULE 10.

All f. o. b. cotton sold for examination in New Orleans shall average in weight not less than 450 pounds per bale. In the case of cotton sold for forward shipment or delivery (*i. e.*, not immediate or prompt shipment or for delivery within 30 days) the weight shall average not less than 480 pounds per bale and not more than 550 pounds per bale. Any excess or deficit in weight to be settled for at the market differences between the invoice price and the value on date of payment.

The present Spot Rule No. 7 shall still apply as to the minimum merchantable weights of single bales.

The maximum and minimum weights on guaranteed through shipments shall be subject to Liverpool or Bremen Rules, according to the terms of sale.

## RULE 11.

Claims for fraudulently packed cotton shall be made in accordance with Rule 16, governing transactions in spots, which reads as follows:

"Falsely or fraudulently packed cotton shall be defined as fol-

lows: 'Such bales as may contain any foreign substance, water-packed bales, or bales containing damaged cotton in the interior, without any indication of such damage upon the exterior of the bale; also such bales as are plated, *i. e.*, composed of good cotton upon the exterior and decidedly inferior cotton in the interior of the bales, in such manner as not to be detected without opening the same.'"

All claims as above shall be accompanied by vouchers duly sworn to before legal authority, setting forth in full the grounds on which the claim is based.

In all cases where cotton is restored and held in this city such claims shall be good against the seller for 100 days from date of delivery. Where cotton has been exported to a foreign or domestic port, the certificate and claim shall be dated within 100 days from the date of the last day of the discharge of the vessel carrying such cotton to the port of destination and must be presented to the seller here, if from Europe within thirty (30) days, and if from American spinners within ten (10) days from date of claim.

## RULE 12.

Barring obstacles over which the buyer has no control, due proof of which shall be furnished, cotton to be weighed in New Orleans shall be weighed within seven (7) working days after arrival, failing which, after three (3) days' notice, the seller shall be released from all responsibility. Cotton sold on Guaranteed Through terms, shipside New Orleans, shall be ordered for shipment within twenty (20) days after notice of arrival; otherwise seller shall not be responsible for any loss in weight.

## RULE 13.

All invoices or drafts against Free on Board cotton, or cotton sold so as to reach here within a specified time, shall, upon presenta-

tion of documents not later than 2 P. M., be paid promptly, excepting in cases covered by Rules 3, 4 and 5.

## RULE 14.

When free on board compressed cotton is condemned by the ship for deficient compressing, the buyer must identify each bale so condemned.

Claims for deficiency in compressing shall be presented within ten (10) days after sailing of vessel.

# RULES GOVERNING COTTON SOLD FOR EXAMINATION IN NEW ORLEANS

## RULE 15.

Every contract for the sale of F. O. B. Cotton on description must

(1) Conform to the requirements of Section 4 of the Rules and Regulations made pursuant to the United States Cotton Futures Act.

(2) Specify the grade, type, sample, or description of the cotton involved in the contract, the price per pound at which such cotton is contracted to be bought or sold, the date of the purchase or sale, and the time when shipment or delivery of such cotton is to be made.

(3) Provide that cotton of or within the grade or of the type, or according to the sample or description, specified in the contract shall be delivered thereunder, and that no cotton which does not conform to the type, sample, or description, or which is not of or within the grade specified in the contract, shall be tendered or delivered thereunder.

(4) Provide that the delivery of cotton under the contract shall not be effected by means of "set-off" or "ring" settlement, but only by the actual transfer of the specified cotton mentioned in the contract.

The subdivisions (1), (3) and (4) shall be deemed fully incorporated into every contract made under the rules and regulations of this Exchange by the recital therein that it is subject to the United States Cotton Futures Act, Section No. 10, and is governed by the Rules of the New Orleans Cotton Exchange.

All contracts made for the sale of F. O. B. Cotton on grade description (i. e., not on type or sample) shall describe the grade

sold and to be delivered in the following form:

.....Bales of Cotton

65 per cent (or more, at seller's option).....[1]

35 per cent (or less, at seller's option).....[2]

Price: .....cents per pound for.....[3]

deliveries and for.....[4] deliveries as much less as market price of.....[4] is below the market price of .....[3] at time of delivery.

[1] Here insert grade.
[2] Here insert the half grade lower.
[3] Here insert grade of which 65% or more to be delivered.
[4] Here insert grade of which 35% or less to be delivered.

RULE 16.

When cotton is bought on type, the seller, if requested, shall seal the type in the presence of the buyer.

RULE 17.

When "free on board" cotton is sold on samples, or types, it shall be optional with the buyer whether he rejects or accepts with an allowance any bales tendered which were not represented in the original samples, or types.

This Rule thus applies only to contracts relating to Spot Cotton, and shall not apply to contracts made at, on, or in the Exchange for future delivery not properly considered as transactions in Spot Cotton.

RULE 18.

If the rejections under the above Rule out of any lot should amount to five (5) per cent or more, they shall be replaced immediately by the local seller with cotton ready for delivery; or at seller's option settlement shall be made with the buyer at the difference in the market value between the date of sale and the date of rejection.

## RULE 19.

F. O. B. cotton sold for examination in New Orleans may be received by the buyer through the New Orleans Cotton Exchange, he paying the extra charges.

## RULE 20.

Cotton rejected (unless otherwise provided for in these Rules) shall be invoiced at contract price back to the local seller, who shall at once reimburse the buyer plus all valid charges incurred.

## RULE 21.

SECTION 1. In case of dispute on contracts to which Rule 17 applies as to grade or staple, after examination of re-drawn samples, due allowance having been made on samples from compressed bales, the buyer shall make a demand for amount of allowance claimed, and the seller in turn shall state what allowance he is willing to make. Failing to agree, either party may demand an arbitration, in which case each party shall call in as arbitrator a member of the Exchange, who is not interested in the transaction, nor an employee of either party.

SEC. 2. The fee for such arbitration shall be five (5) cents per bale to each arbitrator, and, in case the arbitrators call in a third arbitrator, his fee, which shall be 3½ cents per bale, shall be paid in equal shares by the two arbitrators. Provided, that either party to the arbitration shall have a right to demand that two (2) arbitrators shall be drawn by lot by the Superintendent of the Exchange, from the panel of the Board of Classers, in which case the same amount of fees shall be charged and paid into the Cotton Exchange Inspection Fund. In the event of demand for arbitration through the Board of Classers, all samples and communications must be sent to the Secretary of the Exchange, and the packages of samples must be numbered by the Secretary before being sent to the Board of Classers. Names of the parties arbitrating are not to be divulged.

Either party may appeal from the decision of the Board of Classers to the Appeal Committee on Classification, three members of which to be drawn from the panel to act in such case. The additional fees for appeal shall be sixteen (16) cents per bale, to be divided equally among the three members acting and the Exchange. The fees for any appeal shall not aggregate less than twelve ($12) dollars. The costs for arbitrations and appeals shall be paid by the party whose claim differs most from the final award.

SEC. 3. Contracts made at, on, or in the Exchange for future delivery which cannot properly be considered as sales of spot cotton, are within the United States Cotton Futures Act, and every such contract must provide that cotton of, or within, the grade, or of the type, or according to the sample or description specified in the contract, shall be delivered thereunder, and that no cotton which does not conform to the type, sample, or description, or which is not of, or within, the grade specified in the contract, shall be tendered or delivered thereunder. The purchaser is at liberty, if he sees fit, to voluntarily relinquish any of the rights secured to him by such contract, and to accept from the seller cotton tendered by the latter upon such basis as may be voluntarily agreed to between himself and the seller; or he may at the time of settlement voluntarily agree with the seller to accept a tender upon such basis as may be fixed by two members of the Exchange called in by buyer and seller respectively, as arbitrators (who shall not be interested in the transaction, nor an employee of either party). But no contract, agreement or rule, shall directly or indirectly compel or require the buyer to accept upon any basis, cotton which does not conform to the type, sample or description, or which is not of, or within, the grade specified in the contract, if at the time of tender he does not desire to accept it. In the event that the buyer voluntarily accepts cotton so tendered, upon the basis of an allowance fixed by arbitrators, the fees for, and the manner of, the arbitration and appeals, shall be as provided in Section 2 of this Rule.

## RULE 22.

Compressed cotton, re-weighed in New Orleans, shall have three (3) pounds per bale added to New Orleans weights, allowing seven (7) bands of the usual weight of one and three-tenths ($1\frac{3}{10}$) pounds per band to the bale, and final settlement shall be on these weights, irrespective or country invoices, the differences to be paid to or collected from the seller by the buyer. Allowance shall be made by seller to buyer for any ties in excess of seven (7) carried by any compressed bale of cotton delivered in New Orleans without reference to any bales that carry less than seven (7) ties, and delivered in the same lot. Samples and loose shall be paid for by the buyer. Uncompressed bales to be settled for at the actual weight, allowing six (6) ties to each bale.

## RULE 23.

Sellers shall be relieved of any further responsibilities after cotton is re-weighed and re-sampled in New Orleans, except in cases of fraudulently packed cotton, which shall be governed by Rule 11.

## RULE 24.

When cotton is re-sampled and re-weighed here without the knowledge of the seller or his representative, no claim shall be allowed.

## RULE 25.

Cotton sold f. o. b., for examination in New Orleans, shall be weighed in accordance with Rule 14 of the Spot Rules. The tare allowance, if any, to be made according to provisions of Rule 8 of the Spot Rules.

# RULES GOVERNING COTTON SOLD ON "GUARANTEED THROUGH" TERMS.

RULE 26.

The f. o. b. seller shall guarantee the gross landing weight to be within one per cent of the gross invoice weight. Any excess of bands over nine hundred (900) pounds for each one hundred (100) bales of cotton to be deducted from landing weight; allowance to be made for missing bands and ship pickings.

RULE 27.

When the loss in weight on cotton sold on guaranteed through terms amounts to more than two (2%) per cent of the invoice weight, the seller shall refund to the buyer the ocean freight and insurance on the loss in weight above the usual one (1%) per cent franchise.

RULE 28.

Guaranteed through cotton shall not be re-weighed or re-sampled in New Orleans, unless the buyer or seller of such cotton shall have good cause to suspect serious irregularities. After notifying the other party interested, the cotton shall be re-weighed or re-sampled , or both, in New Orleans, by a weigher or sampler, or both, appointed by the Exchange. If the cotton turns out to have been fraudulently shipped, the seller shall pay all expenses, including weighing, sampling, inspecting, etc., and settlement shall be made as in the case of cotton sold for examination here; if it turns out otherwise, it shall take the original course intended, and all expenses shall be paid by the party demanding the examination.

The buyer shall have the right to claim settlement for any difference on samples drawn as above, making due allowance for samples drawn from compressed bales.

## RULE 29.

Cotton sold free on board, guaranteed through, on samples, shall be guaranteed by the seller to turn out at port of discharge equal in all respects to the selling samples, with such allowance as obtains on samples from compressed bales at the port of discharge.

## RULE 30.

Cotton sold landed at mill points in the United States shall be subject to the rules obtaining in the section of the destination of the cotton, so far as the same are not inconsistent with the requirements of the Cotton Futures Act, to the extent that the provisions of that Act may be applicable to the contracts upon which the cotton is sold.

## RULE 31.

All cotton bought on one contract, if shipped by the exporter under one contract, shall be subject to one weight settlement. If shipped by the exporter under several contracts, weight settlements shall be made on each contract.

## RULE 32.

Claims for loss in weight from foreign ports must be substantiated by the proper certificates from seller's controllers, or as may be mutually agreed upon. The seller shall pay controller's fee.

## RULE 33.

All claims for loss in weight shall be forwarded from Europe within thirty (30) days, and for deficiency in grade within forty-five (45) days after discharge of vessel at point of destination, and

must be presented to seller within twenty (20) days thereafter; otherwise, such claim shall not be binding on the seller.

RULE 34.

In claims on f. o. b., guaranteed through cotton for grade, six (6%) per cent shall be deducted from the gross invoice weight when the cotton has been shipped on C. F. and 6 per cent, or C. I. F. and 6 per cent terms, but not otherwise.

RULE 35.

In case of arbitration allowance on guaranteed through cotton, the loss in weight, if any, to be deducted from the invoice weight in making claim.

RULE 36.

When arbitration is held abroad on guaranteed through cotton, the fees shall be paid as is customary in the market in which the arbitration is held.

RULE 37.

Any claim relating to weight, tare or dampness, on guaranteed through cotton, not covered by any of the above provisions, must be established by the respective controllers at the port of discharge.

# FUTURE BUSINESS

# New Orleans Cotton Exchange

## TRANSACTION OF THE FUTURE BUSINESS.

### CONTRACTS AND DELIVERIES.

#### FORM OF CONTRACT.

RULE 1. Section 1. No contract for the future delivery of cotton shall be noticed in any public report or printed circular, or in any manner recognized, acknowledged or enforced by the Exchange or any committee or officer thereof, unless both parties thereto shall be full members of the NEW ORLEANS COTTON EXCHANGE; it being provided, however, that where contracts are issued by firms composed of two or more partners, at least two of said partners shall be full members of said Exchange.

SEC. 2. The following form of contract shall apply to all contracts entered into on and after February 18th, 1915:

#### CONTRACT.

New Orleans,....., 19....

In consideration of one dollar in hand paid, receipt of which is hereby acknowledged, ....., of the City of New Orleans, State of Louisiana, have this day sold to (or bought from) .....of the City of New Orleans, State of Louisiana, 50,000 pounds, in about 100 square bales of cotton, growth of the United States, deliverable from approved storage places for cotton in the Port of New Orleans, between the first and last days of .....next, inclusive, excepting holidays as provided in Rule 40 of the Rules of the New Orleans Cotton Exchange for the transaction of the Future Contract business.

The delivery within such time to be at seller's option, in not

more than two approved storage places, upon five business days' notice to the buyer, as provided by the Rules of the New Orleans Cotton Exchange.

The cotton to be dealt with herein or delivered hereunder shall be of, or within, the grades for which standards are established by the Secretary of Agriculture, except cotton prohibited from being delivered on a contract by the fifth subdivision of Section 5 of the United States Cotton Futures Act, and no other grade or grades (subject to the United States Cotton Futures Act, Section 5, and subject to New Orleans Cotton Exchange inspection and classification) at the price of.....cents per pound for Middling.

In case cotton of grade other than the basis grade should be delivered or tendered in settlement of this contract, the differences above or below the contract price which the receiver shall pay for such grades, other than the basis grade, shall be the actual commercial differences determined as provided in Section 6 of the United States Cotton Futures Act.

Either party shall have the right to call for a margin as the variations of the market for like deliveries may warrant and which margin shall be kept good.

This contract is made in view of, and in all respects subject to, the United States Cotton Futurse Act, Section 5, and to the By-Laws, Rules and conditions, not in conflict therewith, established by the New Orleans Cotton Exchange.

(Signed).....

SEC. 3. Verbal contracts (which shall always be presumed to have been made in the form herein prescribed) shall have the same standing, force and effect as written ones, if notice in writing (conforming to the requirements of Section 4 of the United States Cotton Futures Act) of such contract shall have been given by one of the parties thereto to the other party during the day on which such contract was made or the next business day thereafter.

## AMENDMENT TO SECTION 4, RULE 1, OF THE FUTURE RULES.

(Adopted at meeting of the Board of Directors held on November 10th; posted November 11th; effective November 21st, 1916.)

Expunge Section 4 of Rule 1 as it now stands and substitute therefor the following:

SEC. 4. For the purposes of the form of contract prescribel in Section 2 of Rule 1, the term "about 100 square bales of cotton" shall be deemed to mean "not more than 110 square bales of cotton."

SECTION 2. Every order, written or verbal, given to a member of the New Orleans Cotton Exchange to buy or sell a

## AMENDMENT TO RULE 2 OF THE FUTURE RULES.

(Adopted by Board of Directors October 4th, 1916; posted October 5th, 1916; Effective October 15th, 1916.)

Amend Rule 2, Section 1, of the Futures Rules, page 65 (1915 edition), by expunging the words "on and after February 18, 1915," at end of that section.

The section as amended will then read:

Section 1. Every order, written or verbal, given to a member of the New Orleans Cotton Exchange to buy or sell a contract for the future delivery of cotton, as agent or broker of the party giving the order, shall be agreed to be subject to the By-Laws and Rules of the New Orleans Cotton Exchange and subject to the United States Cotton Futures Act.

### GENERAL PROVISIONS COVERING INSPECTION, CLASSIFICATION AND CERTIFICATION.

RULE 3. Any member of the Exchange may, for his own account or for the account of a principal, submit cotton to the Inspec-

subject to New Orleans Cotton Exchange [illegible]
tion) at the price of.....cents per pound for Middling.

In case cotton of grade [illegible]

[illegible] and effect as written ones, if notice in writing (conforming to the requirements of Section 4 of the United States Cotton Futures Act) of such contract shall have been given by one of the parties thereto to the other party during the day on which such contract was made or the next business day thereafter.

SEC. 4. On and after the passage of this Rule, and during the existence of the Act of Congress entitled "An Act to increase the internal revenue and for other purposes," it shall be the duty of the seller of each contract for future delivery to deliver to the buyer thereof not later than 9 A. M. of the succeeding business day on which said sale was made a legally stamped memorandum or transcript of sale as required by said enactment.

### FORM OF ORDER TO BUY OR SELL CONTRACTS.

RULE 2. SECTION 1.—Every order, written or verbal, given to a member of the New Orleans Cotton Exchange to buy or sell a contract for the future delivery of cotton, as agent or broker of the party giving the order, shall be agreed to be subject to the By-Laws and Rules of the New Orleans Cotton Exchange and subject to the United States Cotton Futures Act, on and after February 18th, 1915.

SEC. 2.—It is the intent of the Rules of this Exchange that every contract for the future delivery of cotton made pursuant to these Rules shall be deemed to contain therein each and every provision and condition mentioned and described in Section 5 of the United States Cotton Futures Act, and each and every such provision or condition, whether expressly and in terms by said Rules incorporated in each such contract or not, is hereby made a part of each such contract as fully and effectually as if therein set out at length; and any provision of said Rules which may in any way conflict with any provision or condition mentioned or described in said Section 5 of said Act is hereby and to the extent of such conflict repealed and declared to be of no effect.

### GENERAL PROVISIONS COVERING INSPECTION, CLASSIFICATION AND CERTIFICATION.

RULE 3. Any member of the Exchange may, for his own account or for the account of a principal, submit cotton to the Inspec-

tion Bureau of the Exchange, and the said Bureau will pass upon said cotton in the instances and manner following:

A.

Prior to delivery on contract, and without references to such delivery, cotton will be inspected, sampled, weighed, classed, a report of classification issued by the Board of Classers, or by the Appeal Committee on Classification, as the case may be, and finally a certificate of grade will be issued by the Inspection Bureau, which certificate shall be guarantee to the last receiver against clerical errors therein or any false packed cotton. Provided, that the party submitting the cotton may waive the issuance of the Inspection Bureau Certificate and accept in lieu thereof the final report of classification, but in this event he shall pay the full certification fees the same as if certificate had been issued.

B.

Cotton tendered for delivery on contract must, prior to delivery, be inspected, sampled, weighed, classed, a report of classification issued by the Board of Classers, or by the Appeal Committee on Classification, as the case may be, followed by a certificate of grade issued by the Inspection Bureau, which certificate shall be guaranteed by the Inspection Fund of the Exchange against clerical errors therein, or any false packed cotton. Provided:

(1) That the parties to the contract delivery may waive the issuance of the Inspection Bureau Certificate and accept in lieu thereof the final report of classification, but in such event the settlement of the contract must be made upon said report of classification issued by the Board of Classers, or by the Appeal Committee on Classification, as the case may be, and the said parties shall pay the full certification fee the same as if an Inspection Bureau Certificate had been issued.

(2) That cotton delivered on contract must be weighed through the Exchange by a weigher duly licensed by the Exchange, subject to the provisons of Section 4 of Rule 22.

(3) That, in case a seller is dissatisfied with the action of the Board of Classers in rejecting his cotton or with the Board of Classers or of the Appeal Committee in classifying it as to grade, quality or length of staple tenderable under the United States Cotton Futures Act, nothing in these Rules shall be deemed to prevent him from tendering such cotton on his own notice or certificate of grade subject to reference to the Secretary of Agriculture under the United States Cotton Futures Act.

The foregoing provisions shall be administered in accordance with the following rules:

LICENSING PRESSMEN, EMPLOYEES AND OTHERS.

RULE 4. All parties engaged in handling cotton for members of this Exchange, under these Rules, including Warehousemen, Pressmen, Assistant Inspectors, Weighers and Samplers, must be licensed or approved by the Board of Directors as follows:

Every application must be properly endorsed by two members of the New Orleans Cotton Exchange, and addressed to the Committee on Supervision and Deliveries (except in the case of Assistant Inspectors, who shall be appointed, as provided elsewhere in these rules). That Committee, after examination into the character and qualifications of the applicant or appointee, shall forward the application or appointment, with its approval or disapproval, to the Secretary of the Exchange, and, in the latter case, shall specify the reasons for its action. If favorably considered by the Board, it shall be returned to the Committee with instructions to issue the license applied for, which license must be signed by the President of the Exchange and countersigned by the Secretary. If not approved by the Board of Directors, it shall be returned to the Committee with memorandum of disapproval endorsed thereon.

Storage places for cotton within the limits of the Port of New Orleans must be recommended by the Committee on Supervision and Deliveries and approved by the Board of Directors.

Any license or approval issued under the provisions of this rule may be cancelled at any time, either by the Board of Directors or the party holding the license or approval (except as to contracts existing at date of notice), by a notice in writing, stating the intention to cancel, given by one party to the other; but a notice to cancel a warehouseman's or pressman's approval must be served at least thirty days before the date therein specified as the date of cancellation.

COMMITTEES, ETC., TO CARRY OUT CERTIFICATION RULES.

RULE 5. The Board of Directors shall annually, at the first meeting after their election, appoint the following:

A Committee on Supervision and Deliveries.
An Inspector-in-Chief.
A Board of Classers.
An Appeal Committee on Classification.

COMMITTEE ON SUPERVISION AND DELIVERIES.

RULE 6. The Committee on Supervision and Deliveries shall consist of the President, ex-officio, at least one member of the Board of Directors, who shall be Chairman, and four members interested in the trade. The Inspector-in-Chief shall act as Secretary of said Committee. The said Inspector-in-Chief shall not be entitled to vote on any subject brought before this Committee. Four members of said Committee shall constitute a quorum.

This Committee shall have general supervision and direction of the Inspection Bureau, subject to the Board of Directors, and shall decide all questions of detail that may arise in the certification and inspection of cotton, and report to the Board of Directors

at each regular meeting. This Committee shall also have charge of all matters appertaining to Supervision and Levee Inspection as provided in Rule 3 of the Press Supervision Rules.

It shall be the duty of this Committee to examine into, and pass upon, all applications for licenses or approvals of Pressmen or Warehousemen, Assistant Inspectors, Weighers and Samplers, and refer the same to the Board of Directors, with its recommendation, for final action; and to adopt such rules and regulations for the guidance of licensed or approved parties as it may deem necessary, and to report the same to the Board of Directors. Upon complaint of misconduct on the part of any person or persons licensed or approved by the Exchange (which complaint must be reduced to writing and verified by the party making it), it shall be the duty of this Committee to summon the accused and accuser before it, to sit as a Court of Inquiry in such case or cases, to take testimony under oath, and to submit the same, together with its recommendations, to the Board of Directors for its approval.

The Committee may, in its discretion, suspend the license or approval of any party, pending the final action of the Board.

It shall be the duty of the Chairman of the Committee on Supervision and Deliveries, upon issuing a license to each Weigher and Assistant Inspector, to have administered to such Weigher or Assistant Inspector the following oath: "I do solemnly swear (or affirm, as the case may be) that I will execute the duties of Weigher (or Assistant Inspector) of Cotton, under the rules of the New Orleans Cotton Exchange, with strict impartiality, and according to the best of my ability."

INSPECTOR-IN-CHIEF; ASSISTANT INSPECTORS; SAMPLERS.

RULE 7. SECTION 1.—At the first meeting held during the month of December, or at any meeting, in case a vacancy in the position should occur, the Board of Directors shall appoint an Inspector-in-Chief of Cotton (who may be the Chief Supervisor of

the Exchange), and such Inspector-in-Chief shall be the Secretary of the Committee on Supervision and Deliveries. His additional salary, if any, as such Inspector-in-Chief and Secretary of the Committee on Supervision and Deliveries shall be determined by the Board of Directors. The Board of Directors shall appoint such Assistant Inspectors as may be necessary, who may also, if desired, serve as Assistant Supervisors. The Inspector-in-Chief shall be Chairman of the Board of Classers.

SEC. 2.—It shall be the duty of the Inspector-in-Chief, when called upon to make an inspection of cotton, to detail an Assistant Inspector and a duly licensed Sampler and Weigher, to whom he shall furnish instructions as to sampling and weighing, and over whom he shall have entire supervision and direction. He shall keep a record of all such cotton as may be inspected, of the marks by which it is submitted, re-marks, classification, place and date of inspection, inspection numbers, names of parties requesting inspection, names of Samplers and Weighers, numbers, weights and any other necessary details, and, upon application by the owner or parties properly interested in the cotton, furnish to them such certificates of the same as they may require. He shall also keep a record of the expenditures incurred in the management of his office as Inspector-in-Chief, separate and distinct from those of the Committee on Supervision and Deliveries.

BOARD OF CLASSERS.

RULE 8. SECTION 1.—The Board of Classers shall consist of from three to seven recognized experts (including the Inspector-in-Chief as Chairman thereof), who shall be paid salaries, to be fixed by the Board of Directors, whose services shall be entirely at the disposition of the Exchange during each business day, and who shall not be engaged in any occupation other than classing cotton for the Exchange and the performance of such other duties as may be required of them under the By-Laws or by direction of the Board

of Directors; excepting that the Inspector-in-Chief may, in addition to classing cotton, also perform the duties of inspection and supervision as required of him, but shall have no occupation other than that strictly called for by his employment by the Exchange.

Two members of this Board shall constitute a quorum, to whom shall be submitted all samples drawn under the auspices of the Inspector-in-Chief for classification.

In the event of these two being unable to agree, they shall take a third from the remainder of the Board, and a majority of these three shall decide the classification.

SEC. 2.—Any decisions rendered by the Board of Classers (except those relating to rejections of unsound or unmerchantable cotton) may be appealed from by either party in interest to the Appeal Committee on Classification.

SEC. 3.—The members of the Board of Classers shall be guided in their decisions exclusively by the "Official Cotton Standards of the United States," which are made the official standards of the Exchange, and it is made their duty to refer to said standards in each and every case before them relating to the grading of cotton.

SEC. 4.—The Board of Directors may, at its discretion, appoint such additional salaried Classers for temporary service as exigencies may require. All appointees to these positions shall be subject to removal at the pleasure of the Board of Directors.

In the event of the absence, by reason of illness or other cause, of any member of the Board of Classers, the Board of Directors shall be empowered to fill the vacancy, either permanently or for the time.

### CLERK BOARD OF CLASSERS.

RULE 9. The Committee on Supervision and Deliveries may appoint, subject to the approval of the Board of Directors, a Clerk of the Board of Classers, who shall be paid a salary to be fixed by the Board of Directors. It shall be the duty of this Clerk to take

charge of the Classification Room, and of the types and samples therein contained, to receipt for all samples sent to the Board, to see that the seals of all samples submitted to the Board are broken only by or in the presence of said Board, to make out the reports of decisions by the Board of Classers or Appeal Committee on Classification, to send the same to the respective parties in interest, and to keep a record of all transactions of both the Board of Classers and the Appeal Committee and of all business done in the Committee Room.

APPEAL COMMITTEE ON CLASSIFICATION.

RULE 10. SECTION 1.—The Board of Directors shall appoint annually, in the month of December, an Appeal Committee on Classification, to consist of seven members of the Exchange, who shall be recognized experts in the classification of cotton.

SEC. 2.—The duties of such Appeal Committee on Classification shall be to decide, subject only to reference to the Secretary of Agriculture under the United States Cotton Futures Act, all questions relating to grade and staple of cotton deliverable on contracts which may be referred to them on appeal from the Board of Classers.

SEC. 3.—Three members of said Committee, to be chosen by lot by the Superintendent, shall serve on each appeal, and the award of a majority shall be final and binding, subject only to reference to the Secretary of Agriculture.

SEC. 4.—No member of said Committee shall serve as an arbitrator on any appeal wherein he is directly or indirectly interested.

SEC. 5.—The samples of cotton sent up for appeal shall be classed between the hours of 11 a. m. and 2 p. m., but must be exposed for twenty-four (24) hours before being classed or passed upon.

Examination of samples and awards may be made on legal or other holidays.

SEC. 6.—The fees for each appeal shall be sixteen (16) cents per bale, of which four cents per bale to be paid to each of the three members of the Appeal Committee, and four cents to the Exchange; and such fees shall be paid by the party appealing, unless more than fifty per cent of his claim is sustained; said fifty per cent to be calculated by number of bales or by value in sixteenths, in accordance with the manner in which claims are made. Should claimants not specify their demands, the fifty per cent shall be calculated by number of bales on which gains or losses have been made. Fees for any appeal on grade or staple shall not aggregate less than

## AMENDMENT TO RULE 11, FUTURE RULES.

(Adopted by the Board of Directors June 7th, 1916; posted June 8th, 1916; effective on and after June 18th, 1916.

Expunge Rule 11, pages 73-74 of the Future Rules (1915 edition), and substitute therefor the following:

### WEIGHT RETURNS.

RULE 11.—Cotton delivered on contract must prior to delivery be weighed through the Exchange, after sampling, by a duly licensed weigher, under the supervision of an Assistant Inspector or licensed weigher duly appointed by the Exchange for the purpose, who shall act as a reweigher, taking the weights from the actual weighing, as shown by the beam (and not from the weigher's book or verbal report), according to the original marks, remarks, lot number and tag number.

Returns of said weights, in accordance with the marks and numbers, shall be made in duplicate, or triplicate, if desired by the owner, one of which shall be sent by the weigher to the office of the Inspector-in-Chief for record and a duplicate sent to the owner of the cotton. The copy of said weights sent to the office of the Inspector-in-Chief shall be compared with the returns of the reweigher, bale by bale, and in event of any discrepancies, the cotton shall be weighed again. Charge for weighing shall be determined by the Board of Directors, one-half of which charge shall be paid by the receiver of the cotton to the party making the delivery. The deliverer shall furnish the receiver with a copy of the detailed weight returns.

charge of the Classification Room, and of the types and samples therein contained, to receipt for all samples sent to the Board, to see that the seals of all samples submitted to the Board are broken only by or in the presence of said Board, to make out the reports of decisions by the Board of Classers or Appeal Committee on Classification, to send the same to the respective parties in interest, and to keep a record of all transactions of both the Board of Classers and the Appeal Committee and of all business done in the Committee Room.

SEC. 6.—The fees for each appeal shall be sixteen (16) cents per bale, of which four cents per bale to be paid to each of the three members of the Appeal Committee, and four cents to the Exchange; and such fees shall be paid by the party appealing, unless more than fifty per cent of his claim is sustained; said fifty per cent to be calculated by number of bales or by value in sixteenths, in accordance with the manner in which claims are made. Should claimants not specify their demands, the fifty per cent shall be calculated by number of bales on which gains or losses have been made. Fees for any appeal on grade or staple shall not aggregate less than twelve (12) dollars.

SEC. 7.—The decision of the Appeal Committee shall be made as soon as practicable in writing, and filed with the Superintendent of the Exchange, who shall serve a copy thereof upon each party interested and collect the fees.

SEC. 8.—The members of the Appeal Committee on Classification shall be guided in their decisions exclusively by the Official Cotton Standards of the United States, which are official standards of the Exchange, and it is made their duty to refer to said standards in each and every matter before them which relates to the grading of cotton.

SEC. 9.—If any member of this Committee drawn by lot to serve in any case is disqualified or unable to attend, the Superintendent shall draw another in his stead.

WEIGHT RETURNS.

RULE 11. Cotton delivered on contract must, prior to delivery, be weighed through the Exchange, after sampling, by a duly licensed weigher, under the supervision of the Assistant Inspector or licensed weigher duly appointed by the Exchange for the purpose, who shall keep a check upon the weigher, by taking weights in the manner that is customary in re-weighing, according to the original marks, re-marks, lot number and tag number. Returns of said

weights, in accordance with the marks and numbers, shall be made in duplicate, or triplicate, if desired by the owner, one of which shall be sent by the weigher to the office of the Inspector-in-Chief for record, and a duplicate sent to the owner of the cotton. Charge for weighing to be determined by the Board of Directors, one-half of which charge shall be paid by the receiver of the cotton to the party making the delivery.

SAMPLING; DUTIES OF SAMPLER AND ASSISTANT INSPECTOR; IDENTIFICATION TAGS.

RULE 12. SECTION 1.—All cotton submitted for inspection shall be sampled by a duly licensed Sampler, under the supervision of a duly licensed Assistant Inspector. In sampling it shall be the duty of the Sampler to draw the samples from the top side of the bales, which samples shall be those that are afterward submitted to the Board of Classers for the determination of grade or staple and record.

In sampling cotton submitted for inspection, the Sampler shall draw one sample large enough to be broken into two parts across the layer and not parted with the layer; one part to be put in one paper, and the other in another paper. When it shall be impracticable to draw one sample large enough, as above directed, two samples shall be drawn, and the comparison made immediately. Any samples drawn at the direction of the owner shall be drawn prior to the weighing. A tag for identification shall be attached to each bale certificated for grade and the duplicate tag shall be placed in one sample and the triplicate shall be placed in the other.

SEC. 2.—It shall be the duty of the Assistant Inspector, together with the Sampler, to carefully examine and inspect each bale, to see that the same is sound and merchantable, and that no other bale is permitted to be put in any class mark or lot that is to be sent to the Board of Classers. The samples of such bales as

may be rejected by the Assistant Inspector and Sampler shall be carefully preserved with all defects, and, at the option of the owner of the cotton, may be submitted to the Board of Classers, to determine whether the rejection made is proper. The Board of Classers shall have the power to order any bale improperly rejected to be inspected in the same manner as though no rejection had been made. It being provided that neither the Assistant Inspector nor Sampler shall pass on any question of grade, which must only be settled by the Board of Classers or the Appeal Committee on Classification, subject to reference to the Secretary of Agriculture, under the United States Cotton Futures Act.

MIXED PACKED, SANDY, DUSTY, COMPRESSED AND SHIPMARKED COTTON.

RULE 13. SECTION 1.—No mixed packed cotton shall be received on contract.

SEC. 2. A bale of cotton shall be considered mixed when a difference of more than two grades is shown between samples drawn from the heads, top and bottom sides of the bale, or when such samples show a difference in color exceeding two grades in value, said grades being the official cotton standards of the United States.

SEC. 3.—Samples of sandy and dusty cotton shall always be classed and kept separate from clean cotton.

SEC. 4.—Removal of one or more bands from the bale for purpose of inspection shall be at the owner's expense, including cost of compressing (if any), if the bale is rejected for cause, otherwise the expense, including compressing, must be paid by the party removing the band or bands.

SEC. 5.—In the event of a disagreement as to the quantity of sand in any bale or bales, either the Inspector-in-Chief or the owner of the cotton, may require any such bale or bales to be opened and the actual quantity of sand ascertained, all expenses and loss incident thereto to be paid by the party in error.

The bale shall be opened in the presence of representatives of the owner and the Inspector-in-Chief, and an amount of cotton sufficient to be thoroughly representative shall be taken therefrom, and

## AMENDMENT TO RULE 13 OF THE FUTURE RULES

(Adopted by the Board of Directors May 2nd, 1917; Posted May 3rd, 1917; Effective May 13th, 1917.)

Amend Rule 13, Section 6, of the Future Rules by inserting after the words "especially as to" in the third line, the words "at least one"; and after the words "space on" in the same line, the words "the top side of."

The Section as amended will read:

SEC. 6. Compressed and shipmarked cotton shall be considered a good delivery, provided the same is in merchantable order and condition, especially as to at least one space on the top side of the bale for re-marking."

change, by certified check, the same as is done in the case of regular future margins, a sum sufficient to cover the cost of compressing customary at the time of delivery. This amount shall be deposited in bank and a certificate of deposit obtained therefor, payable to deliverer or receiver as the Superintendent of the Exchange may direct. The sum thus deposited shall be held for six months, at expiration of which time the deliverer shall be entitled to same, or to such portion of said sum as will cover such bales as retain compressing up to standard, the difference to be returned to receiver.

Should it be determined in less than six months that any or

all of the bales are not up to standard, the receiver shall be entitled to return of amount due on such bales.

STAPLE COTTON.

RULE 14. SECTION 1.—Staple cotton may be delivered on contract and allowed a premium of not in excess of one-quarter (¼) cent per pound.

SEC. 2.—The Board of Classers shall, on request of the party tendering cotton for inspection, where staple is claimed, report whether it comes within the rules; provided, that such request is made before classification has commenced. No cotton, the staple of which measures less than one and one-sixteenth (1 1/16) inch in length, shall be considered as staple within the meaning of this rule. The Board of Classers, in rendering their decision, where a bale is found to possess staple within the meaning of this rule, shall state the fact that it is staple, without recording the length of staple. No allowance shall be made on account of staple for cotton grading under Low Middling.

SEC. 3.—Decisions of the Board of Classers in reference to staple may be appealed from by the deliverer prior to delivery or by the first receiver within two business days after receipt of the samples, in the same manner and subject to the same conditions as apply to appeals on grade, and the decision of the Board of Classers, if not appealed from, or of the Appeal Committee in event of appeal, shall be final and binding, subject to reference to the Secretary of Agriculture; provided, that no decision prior to delivery shall deprive the first receiver of the right of appeal.

SEC. 4.—Neither the Cotton Exchange nor the Inspection Fund accepts responsibility for decisions of the Board of Classers or the Appeal Committee in reference to staple, nor will it guarantee the same.

SEC. 5.—It is made the duty of the Inspector-in-Chief to note on the certificate of grade the number of bales of staple cotton as

ascertained by the Board of Classers or the Appeal Committee, as provided in Section 3 of this rule.

SEC. 6.—All costs, charges or fees for stapling cotton, or for decisions of the Board of Classers or of the Appeal Committee on Classification, shall be borne by the owners, deliverers or receivers thereof, and not by the Exchange.

Where appeals from decision of the Board of Classers in reference to staple are made, the party appealing must state explicitly in writing what that demand is.

The demand so made shall be sent in a sealed envelope to the Superintendent of the Exchange.

The decision of the Appeal Committee shall be made as soon as practicable, in writing, and filed with the Superintendent of the Exchange, who shall serve a copy thereof upon each party interested and collect the appeal fees, which shall be paid by the party whose claim differs most from the final award.

SEC. 7.—In order that staple may be allowed, the cotton shall have a length of not less than one and one-sixteenth (1 1/16) inch, to be determined by the Board of Classers, or, if appealed from, by the Appeal Committee on Classification.

SEC. 8.—When staple cotton is tendered for inspection, it shall be class-marked and sampled according to length of fibre, and in no case shall it be class-marked and sampled with common staple cotton.

SEC. 9.—The charge for stapling cotton shall be determined by the Board of Directors.

PREMIUM FOR STAPLE.

SEC. 10.—In order that value shall be allowed, at least eighty (80) bales in each contract shall have been decided by the Board of Classers or (if the decision of the Board of Classers has been appealed from) by the Appeal Committee on Classification, to have a length of not less than one and one-sixteenth (1 1/16) inch.

SEC. 11.—Upon each transfer of staple cotton the samples shall be submitted to two members of the Appeal Committee on Classification (to be drawn by lot by the Superintendent), who shall act as a Committee on Valuation for decision as to value to be allowed for staple on each of the samples submitted, and, unless their decision is appealed from, the deliverer shall be entitled to collect whatever premium may be allowed by said Committee, whether it be on the whole or any part of the eighty (80) bales that have been declared staple cotton under provisions of Sections 2 and 3 of this rule. In determining values, both strength and style shall be considered, and, when allowance is made, it shall be in accordance with the actual market value of like staple, but in no event shall more than one-quarter (¼) cent per pound be allowed on account of staple.

SEC. 12.—In event of appeal from the decision of the Valuation Committee, the Superintendent shall draw three other members from the Appeal Committee on Classification, who shall act as an Appeal Committee on Valuation, whose decision shall be final.

The duty of the Committee on Valuation and the Appeal Committee on Valuation shall be to award value for staple, and not to determine whether or not cotton has staple.

Where appeals from decisions of the Committee on Valuation are made, the party appealing must notify the opposite party in writing of his demand, and state explicitly what that demand is, by 11 o'clock a. m. of the day following the receipt of the award of the Committee on Valuation.

The opposite party shall, before 2 p. m. of the same day, notify the party appealing what concession, if any, he is willing to make. The proposition so made, signed by both parties shall, unless such concessions be accepted, be sent in a sealed envelope to the Superintendent of the Exchange.

The decision of the Appeal Committee on Valuation shall be made as soon as practicable, in writing, and filed with the Superintendent of the Exchange, who shall serve a copy thereof upon each party interested.

SEC. 13.—Fees for valuation of staple cotton shall be five (5) cents per bale for each arbitrator, to be paid by the deliverer, whether value is allowed or not, but, in event of appeal, the appeal fees, which shall be five (5) cents per bale for each member of the Appeal Committee on Valuation, shall be paid by the party whose appeal differs most from the final award.

SEC. 14.—If any member drawn to serve on either the Committee on Valuation or Appeal Committee on Valuation is disqualified or unable to attend, the Superintendent shall draw another in his stead.

SPOT QUOTATIONS.

RULE 15. SECTION 1. The Spot Quotation Committee shall be required to quote all grades of spot cotton for which standards are promulgated by the Secretary of Agriculture under the United States Cotton Futures Act, and such grades, above and below the official Cotton Standards of the United States as are sold in this market, and such quotations shall be expressed in terms of cents and hundredths of a cent. A fraction of a hundredth when equal to or greater than a half shall be treated as a hundredth and when less than a half of a hundredth shall be disregarded. Only such grades as are embraced in the official Cotton Standards of the United States shall be considered in settlement of future contracts.

SEC. 2. Settlements of grade differences to liquidate a future contract shall be made on the actual grade differences of the United States official cotton standards, as promulgated in accordance with the requirements of Section 6 of the United States Cotton Futures Act (which differences shall be separately noted on the Exchange

boards) as existing on the sixth business day prior to the day on which delivery is due. The proper official of the Exchange shall assses the said grade differences, as posted, in the manner herein set forth, at the said time to the bales as classed and described in the certificate of the Board of Classers or described on the individual notice or certificate of grade of the deliverer.

SEC. 3. Unless prohibited by law or by ruling of the Secretary of Agriculture, the value of cotton "within," midway between, the grades promulgated by the Secretary of Agriculture shall be considered the mean of the adjacent grades.

SEC. 4. Cotton containing sand or dust not rejectable under the contract shall be valued at one-eighth of a cent per pound under quotations.

Premiums for staple shall be determined by the Appeal Committee on Classification.

INSPECTION AND CLASSIFICATION: HOW PROCURED, LIMIT OF TIME FOR APPEALS.

RULE 16. SECTION 1.—Any member of the Exchange desiring the inspection and classification of cotton shall notify the Inspector-in-Chief in writing, stating the number of bales, marks, and places where such inspection is desired, which places must be at approved storage places for cotton, and at the same time furnish the Inspector-in-Chief with a list of such marks and class-marks as he may desire to have placed upon the bales.

Such notice must be lodged in the office of the Inspector-in-Chief not later than 3 o'clock P. M. on the day preceding the day for which the inspection is demanded.

If for any cause whatever, except inclement weather, the cotton to be inspected is not ready for inspection, the owner of the cotton may be liable to the Inspection Bureau for the loss, if any, caused by reason of the delay. The Inspector-in-Chief shall report such cases to the Committee on Supervision and Deliveries, which

shall determine the amount of money to be due, and require its payment.

In the absence of any direction as to marking, the Inspector-in-Chief shall order the inspection to proceed as though the marks already upon the bales were those designated to be placed there, supplementing the same with tags for identification.

SEC. 2.—*Form of request for the inspection, weighing and classification of cotton*:

NEW ORLEANS,.....191...

To.....

Inspector-in-Chief,

New Orleans Cotton Exchange:

We respectfully request that you detail an Assistant Inspector, Sampler and a licensed Weigher to be present at the..... .....who together shall weigh, sample and inspect the following lots of cotton, the samples of which to be classed under the Rules. Respectfully,

.....

SEC. 3.—After receiving such notification, it shall be the duty of the Inspector-in-Chief, as soon as possible, to detail an Assistant Inspector, a Sampler, and a Weigher, to carefully inspect, sample and weigh the cotton, placing upon the bales such re-marks as his instructions cover and a lot number, which lot number shall be the same on each bale comprising the lot or class mark. Each bale shall be securely tagged for identification and a duplicate and triplicate of the tag shall be placed in the samples of the lot sent to the classification room. Said tags to contain the lot number and such other marks as may be determined. The samples shall

be kept in separate papers for each class mark in the lot. The cotton shall be carefully examined to see that the bales are merchantable. The sampling shall be done by Samplers of the Exchange, and the weighing by a Weigher of the Exchange. The sampling must be under the supervision and direction of the Assistant Inspector in charge, but no Sampler or Weigher shall be employed who is in the service of any person interested in the cotton to be inspected.

SEC. 4.—Where cotton is tendered for inspection that, in the opinion of the Inspector, contains moisture to such an extent as to make it possible that damage might result from its being stored, the Inspector-in-Chief shall require a personal guarantee in writing from the party or parties having it inspected, to the effect that such party or parties assume all liability for claims arising from such damage, or he, the Inspector-in-Chief, may, at his discretion, reject such cotton until it is in proper condition.

SEC. 5.—After the samples shall have been drawn they shall be sealed at the press and immediately sent to the Inspector-in-Chief, and, as soon as practicable thereafter, they shall be put up and exposed to the air for twenty-four hours, without handling, after which they shall be delivered to the Board of Classers and comparison of the two sets made. As soon as possible thereafter, taking into consideration proper light, the classification shall be proceeded with, bale by bale, and a certificate rendered, stating the number of bales of each grade in each lot or class mark, and the class of each bale according to the identification tag, which certificate shall be promptly delivered, by the clerk of the Board of Classers, to the Inspector-in-Chief at his office, and a duplicate delivered to the owner of the cotton.

SEC. 6.—If the classification rendered by the Board of Classers is appealed from, the set of samples other than those passed upon by the Board of Classers shall be submitted to the Appeal Committee on Classification, and the samples upon which the Appeal

Committee on Classification renders its decision shall be the ones that are retained by the Inspector-in-Chief, and the other set, which was previously classed by the Board of Classers, shall be the set finally delivered to the owner of the cotton.

Samples retained by the Inspector-in-Chief shall, after having been finally passed upon and certificate rendered of their grade, be safely cared for, until the cotton is shipped out of the storage place, and said samples shall be subject to the order of the owner of the cotton, who shall remove them within ten days after the cotton has been shipped out, or has ceased to be inspected cotton, after which time the samples shall become the property of the Inspection Bureau.

SEC. 7.—The Inspector-in-Chief shall also, upon the receipt of report of classification from the Board of Classers or the Appeal Committee on Classification, immediately record such final classification as rendered, opposite the lot number and identification mark or number.

SEC. 8.—An appeal from the classification, as rendered by the Board of Classers, must be made within five business days.

### BALES SUBJECT TO REJECTION.

RULE 17. Unmerchantable bales, which shall be invariably rejected, shall be understood to include false packed, water packed or plated bales, cotton that is mixed packed,* cotton of perished staple or immature staple, re-ginned, re-packed or re-baled cotton, and bales that show an excess of seed, sand, dust or dirt, bales that have been on fire, or any other bales not merchantable cotton, it being the intention of this Rule that only the regular run of cotton as gathered in the fields of the Cotton States of the United States shall be considered merchantable.

*Gin-Cut Cotton*, where the extent of the gin cutting is such as

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* For definition of Mixed Packed, see Rule 13.

to reduce the value of the cotton more than two grades, shall not be deliverable on contract, the grades referred to being the nine grades established in the Official Cotton Standards of the United States. Gin cutting of a less extent which reduces the cotton below the value of Good Ordinary, renders cotton untenderable.

*Re-ginned Cotton,* which is not tenderable, is cotton that has passed through the ginning process more than once. Also such cotton as, after having been ginned, is subjected to a cleaning process and then baled.

*Re-packed Cotton,* which is not tenderable, is considered to mean factors', brokers', and all other samples, "loose" or miscellaneous lots collected together and re-baled.

*Water Packed Cotton,* which is untenderable, includes such bales as have been penetrated by water during the baling process, causing damage to fiber, or bales that through exposure to the weather, or by other means, while apparently dry on the exterior, have been damaged by water in the interior.

*Perished Staple.* Cotton of perished staple, which is not tenderable, is such as has had the strength of fibre as ordinarily found in cotton destroyed or unduly reduced through exposure, either to the weather before picking or after baling, or to heating by fire, or on account of water packing, or through other causes.

*Immature Staple.* Cotton of immature staple, which is not tenderable, is such as has been picked and baled before the fiber has reached the normal state of maturity, resulting in a weakened staple of inferior value.

*False Packed Cotton,* which is not tenderable: Cotton bales will be deemed false packed whenever containing substances entirely foreign to cotton or containing damaged cotton in the interior, with or without any indication of such damage upon the exterior; also when plated (that is, composed of good cotton upon the exterior and decidedly inferior cotton in the interior) in a manner not to

be detected by customary examination; also when containing pickings or linters worked into them.

Any bale showing gin-fall shall be accepted at its re-weight after the gin-fall is removed.

Sandy cotton which shall be rejected is defined as cotton containing more than one per cent (1%) of sand, and dusty cotton as cotton lessened in value more than one-eighth (⅛th) of a cent per pound by reason of dust.

No cotton that because of extraneous matter of any character, or irregularities or defects, is reduced in value below that of Good Ordinary, or if tinged, cotton that is below the grade of Low Middling, or if stained, cotton that is below the grade of Middling, or cotton that is less than seven-eighths (⅞ths) of an inch in length of staple, shall be deliverable on contract.

PRESS REJECTIONS: HOW DISPOSED OF; CHARGE FOR PASSING UPON SAMPLES.

RULE 18. In event of rejections by the Sampler and Inspector, the owner of the cotton shall be permitted, if he so desires, to submit the samples of such rejected bales to the decision of the Board of Classers. If all or any of the samples shall be declared by a majority of this Board to be proper for delivery, said samples shall be taken in charge by the Inspector or Assistant Inspector.

There shall be no appeal from the decision of the Board of Classers on cotton rejected by the Sampler and Inspector as unsound or unmerchantable, except to the Secretary of Agriculture.

The charge for passing upon samples so submitted to the Board of Classers and rejected by them shall be ten (10) cents per bale. It being, however, provided that if the rejections exceed ten (10) per cent., the charge shall be twenty-three and one-half (23½) cents per bale on all bales in excess of ten (10) per cent.

SAMPLES RETAINED BY INSPECTOR-IN-CHIEF; OWNERSHIP OF DUPLICATES.

RULE 19. The two sets of samples for the purposes of inspection and grading shall be the property of the party holding the

be detected by customary examination; also when containing pickings or linters worked into them.

Any bale showing gin-fall shall be accepted at its re-weight after the gin-fall is removed.

Sandy cotton which shall be rejected is defined as cotton con-

## AMENDMENT TO RULE 18 OF THE FUTURE RULES.

(Adopted by Board of Directors October 4th, 1916; posted October 5th, 1916; Effective October 15th, 1916.)

Amend Rule 18 of the Future Rules, page 86, (1915 edition) by substituting the words and figures "twenty-five (25)" in the fourth and fifth lines of the third paragraph, in place of the words and figures "twenty-three and one-half (23½)."

The rule as amended will then read:

### PRESS REJECTIONS; HOW DISPOSED OF; CHARGE FOR PASSING UPON SAMPLES.

Rule 18. In event of rejections by the Sampler and Inspector, the owner of the cotton shall be permitted, if he so desires, to submit the samples of such rejected bales to the decision of the Board of Classers. If all or any of the samples shall be declared by a majority of this Board to be proper for delivery, said samples shall be taken in charge by the Inspector or Assistant Inspector.

There shall be no appeal from the decision of the Board of Classers on cotton rejected by the Sampler and Inspector as unsound or unmerchantable, except to the Secretary of Agriculture.

The charge for passing upon samples so submitted to the Board of Classers and rejected by them shall be ten (10) cents per bale. It being, however, provided that if the rejections exceed ten (10) per cent., the charge shall be twnty-five (25) cents per bale on all bales in excess of ten (10) per cent.

SAMPLES RETAINED BY INSPECTOR-IN-CHIEF; OWNERSHIP OF DUPLICATES.

RULE 19. The two sets of samples for the purposes of inspection and grading shall be the property of the party holding the stamped warehouse receipt and Inspector's certificate of grade, one set of which shall be retained by the Inspector-in-Chief.

The set of samples not retained by the Inspector-in-Chief shall be delivered to the order of the party holding the warehouse receipt, and said party shall be responsible for such samples one week after the issuance of the certificate of grade and thereafter.

Upon the delivery of any contract the samples thereof shall be delivered to the receiver within not more than two (2) business days from the date of the contract delivery, and the samples of any one contract shall be delivered from one place or office to the receiver of the contract, and for failure to deliver the samples of any contract within the time or within the manner prescribed in this rule, the party delivering the contract shall pay the receiver thereof the sum of ten dollars per contract, but the payment of this penalty shall not relieve the party delivering the contract of any responsibility for the samples.

WAREHOUSE RECEIPTS, WHEN AND HOW ISSUED—TO BE STAMPED BY INSPECTOR-IN-CHIEF.

RULE 20. SECTION 1.—After cotton has been sampled and weighed, negotiable warehouse receipts stating the marks of bales, lot numbers, and entries on identification tags, shall be immediately issued to owners of cotton, a separate receipt for each lot; no receipt to be for more than about one hundred bales or fifty thousand pounds; such receipts shall be lettered or numbered by each warehouse consecutively, and no two receipts shall bear the same letter or number.

SEC. 2.—Upon presentation by the owner of such warehouse

receipts to the Inspector-in-Chief at his office, it shall be the duty of the Inspector-in-Chief to stamp thereon the weight of the cotton in accordance with the records of his office.

CERTIFICATES OF GRADE, HOW AND WHEN ISSUED.

RULE 21. SECTION 1.—Upon final determination of the classification of cotton, the Inspector-in-Chief shall issue a certificate, stating the name of the storage place for the cotton, the number or letter of the press or warehouse receipt, the marks of bales and lot or tag marks or numbers, whether compressed or uncompressed (provided, however, that the Inspection Fund shall not be responsible for any error in the statement as to whether cotton is compressed or uncompressed), and also the number of bales of each grade, in accordance with the report rendered to him by the Board of Classers or the Appeal Committee on Classification, and following shall be a certification, signed by the Inspector-in-Chief, that the grades as specified are correct, and each certificate shall be good as long as the cotton may remain in store.

SEC. 2—In case of the absence of the Inspector-in-Chief, such certificate of grade shall be signed by the Chairman of the Committee on Supervision and Deliveries, or, in case of the absence of both the Inspector-in-Chief and the Chairman of the Committee on Supervision and Delieveries, the President shall designate some other members of the Committee on Supervision and Deliveries as acting Chairman of the Committee, who shall sign such certificates, notice of such appointment to be immediately posted in the Exchange and sent to the Board of Directors.

This rule shall not apply when the Inspector-in-Chief is temporarily absent from his office, but only in cases when he is detained by illness or other causes for so long a period that to await his return would delay the issuing of the certificate of grade for an unreasonable time.

SEC. 3.—On the margin of such certificate of grade shall be plainly printed the following:

"This certificate is not valid unless signed either by the Inspector-in-Chief or by the Chairman or Acting Chairman of the Committee on Supervision and Deliveries."

SEC. 4.—No such Inspector's certificate of grade shall be issued upon the report of the Board of Classers until the time within which an appeal may be taken has expired, unless the owner of the cotton shall file with the Inspector-in-Chief a waiver of the right to appeal.

SEC. 5.—Any certificate issued under the provisions of this Rule shall be invalid, and all liability of the Exchange cease, if the cotton represented thereby be in any way handled, whether for sampling, examination or otherwise, except when done under the direction and supervision of the Inspector-in-Chief, and the charge for such supervision shall be three (3) cents per bale.

SEC. 6.—The form of request for supervision of cotton withdrawn from certificates shall in all cases be as follows:

New Orleans.....19...

To the Inspector-in-Chief,

New Orleans Cotton Exchange:

We respectfully request that you detail a representative of your Department to be present at.....
to supervise the delivery of ..... bales, which it is desired to withdraw from Certificates .....

This request is made in compliance with Rule 21, Section 5, of the Future Rules, in order to prevent invalidation of said certificates.

### WHAT CONSTITUTES A GOOD DELIVERY.

RULE 22. SECTION 1. Negotiable press or warehouse receipts, signed by the warehouseman, indorsed by the party in whose favor

they are drawn (which indorsement must be witnessed) and accompanied by a certificate of grade issued by the Inspection Bureau or by a written notice of grade, followed by such certificate of grade, or by the seller's own notice or certificate of grade (subject to provisions of Rule 3), shall be a good delivery in fulfillment of contract for future delivery, and shall be deemed a liquidation of the contract on which such delivery is made, and the member receiving the same shall return to the member making the delivery his transferable notice. No warehouse receipt shall be tendered which does not bear the stamp of the Inspection Bureau and the weight of the cotton. The delivery of the cotton shall be considered complete when warehouse receipts and certificates of grade, as above provided, shall have been delivered to the receiver; but on and after February 18th, 1915, this provision shall not relieve either party from liability in the final adjustment of accounts resulting from reference of differences in dispute to the Secretary of Agriculture.

In event of the issuance by the Secretary of Agriculture of a certificate of grade, such certificate of grade shall be accepted as final in making complete deliveries, and shall supersede the certificate issued by the Inspection Bureau, which shall then be recalled and cancelled.

SEC. 2. If delivery of press or warehouse receipts in fulfillment of a contract for future delivery has been accompanied by the Inspection Bureau's notice of grade only, certificate of grade issued by the Inspection Buraeu shall be delivered within five business days after issuance, unless in the meantime reference has been made to the Secretary of Agriculture. If such reference shall have been made, the final certificate of grade, as determined by the Secretary of Agriculture, shall be delivered within forty-eight hours after its receipt, Sundays and holidays excepted. Final settlement shall be made within twenty-four hours after the expiration of the time allowed for delivery of certificates of grade as above provided. Failure to comply with these provisions shall make the deliverer

liable to the receiver for a penalty of five dollars per diem on every contract, payable to the other party at interest. Notice of reference to the Secretary of Agriculture, specifying the demands made, must be given to the other party at interest at the time of making such reference.

SEC. 3.—All deliveries or transfers of cotton must be free of all press or warehouse charges thereon to date of delivery or transfer.

SEC. 4. The grade stated in the Inspection Bureau's certificate of grade, unless superseded by certificate of grade by the Secretary of Agriculture, shall be binding on all parties, subject to the provisions of Rules 21 and 39, and the weight as noted by the Inspection Bureau on the press or warehouse receipt shall be binding on all parties, subject, however, to an allowance of a half pound per bale per month or fraction of a month, except when cotton is delivered within fifteen (15) days after being weighed and inspected, in which case no allowance shall be made; provided further, that certificate of grade as issued by the Inspection Bureau shall remain good as long as the cotton may remain in store, subject to the provisions of the first paragraph of Rule 21 of these Rules.

SEC. 5. Written notification of the holding of a transferable notice, after having been stamped and numbered by the Superintendent of the Exchange, shall be given before 4 o'clock P. M. (except on Saturdays, and on Saturdays not later than 2 P. M.) on the day previous to the day delivery is due thereon, by the holder to the member issuing the transferable notice, and shall be accepted as a legal demand for the cotton. The issuer of the notice shall, before 2 o'clock P. M. on the day of delivery, tender to the member holding said transferable notice, a warehouse receipt or receipts in the manner and form hereinbefore provided, together with a written notice of grade or a certificate of grade, issued as provided in Section 2 of this Rule, for about fifty thousand pounds of cotton, said cotton to be in not more than two storage places for cotton. A bill for the cotton, giving marks and location and name of storage place

or places, shall be rendered before 11 o'clock A. M. on the day of delivery, with allowance for grade, staple and weight as hereinbefore stated. Provided, that where deliveries are made on Saturdays, bills for the cotton, giving marks, location and name of storage place or places, shall be rendered before 10 o'clock A. M., and warehouse receipt or receipts shall be tendered before 11:30 A. M.

TRANSFERABLE NOTICES AND SHORT NOTICES.

RULE 23. Where notice of delivery by the seller is required by a contract, it shall be given to the buyer five minutes before the opening of the future business, on the fifth business day prior to the date of delivery, except when delivery is to be made upon the last day of the month, in which case notice of delivery shall be given by the seller before fifteen minutes after 12 o'clock noon on the last day of the month upon which transferable notices may be issued.

The party receiving the notice may transfer the same to another party, and it may be given from one transferee to another. Every transfer must be made promptly within twenty minutes after the time of receipt and every person receiving the notice shall indorse upon it the time of receipt. Any party or parties who may fail to forward such notice within that time shall be liable to a penalty of 25-100c per pound in favor of the party with whom it may lodge at the close of the day. All transfers shall be made previous to the closing hour of the future business in the Exchange, a notice becoming a short notice after the closing hour of the future business on the day of its date. All differences thereon to be paid as provided for in Rule 50 for payment of ring settlements. When sold as short notice the payments must be made direct, and the price made equal to that at which it was first issued. Should the office of the party to whom notice is to be given be closed, it shall be good service to give the notice to the Superintendent of the Exchange. He shall indorse thereon the day and time of its receipt, and post notice thereof on the bulletin of the Exchange.

Every notice shall be for 50,000 pounds of cotton, and, in form, as follows:

TRANSFERABLE NOTICE.

.....O'Clock. New Orleans.....19...

To T. & Co.:

Take notice, that on.....we shall deliver you 50,000 pounds in about one hundred square bales of cotton in accordance with the terms of our contract sale to you, dated....., at .....cents per pound. We pledge *ourselves* to deliver on the day specified for delivery, to the last holder hereof, warehouse receipt or receipts, together with a written notice of grades or a certificate or certificates of grade, (as provided in Rule 22 of the Future Rules) upon written notice by the last holder of this notice of the holding of same to us (not later than 4 P. M., except on Saturdays, and on Saturdays not later than 2 P. M.) on the business day previous to the one herein specified for delivery of the cotton. This notice to be delivered to us simultaneously with our delivery of the warehouse receipt or receipts to the holder thereof. F. G. & Co.

CONDITIONS.

In consideration of one ($1) dollar paid to each of the acceptors, receipt of which is hereby acknowledged, it is agreed that the last acceptor hereof will, before 4 P. M. (except on Saturdays, and on Saturdays not later than 2 P. M.) on the.....day of....., give written notice of the holding of this notice to (F. G. & Co.), and on the.....day of..... receive from (F. G. & Co.) warehouse receipt or receipts, together with a written notice of grade, or a certificate or certificates of grade (as provided in Rule 22 of the Future Rules) for about 100 square bales of cotton, and pay them, on receipt of warehouse re-

ceipt or receipts, the full amount of.....cents per pound therefor, settling with them on the basis of Middling, with allowances for variation in grade, as provided in Section 6 of the United States Cotton Futures Act, existing on the sixth business day previous to the day on which the delivery is due. It is further agreed that each acceptor hereof shall continue his (or their) liability to each other for the fulfillment of the contract until this notice shall have been returned to F. G. & Co., and warehouse receipt or receipts for the cotton to be delivered received by the last acceptor hereof from F. G. & Co., at which time all responsibilities of intermediate parties shall cease. T. & Co.

FORM OF TRANSFER.

..... O'Clock. New Orleans.....19...

Messrs. I. S. & Co.:

We accept the above with all its conditions and obligations and you will please take notice that in accordance therewith we shall deliver you 50,000 pounds in about one hundred square bales cotton on account of *our* contract sale to you, dated ....., the cotton to be paid for at the price of transferable notice.

T. & Co.

Such notice, if tendered by the drawer five minutes before the opening of the future business on the fifth business day before delivery of cotton is due, shall be accepted by any member of the Exchange to whom cotton is due under any contract; and the price shall be made equal to the price of the contract on which it shall be tendered, provided that it is otherwise in accordance with such contract; and the cotton delivered on such notice shall be accepted as so much received in fulfillment of the contracts specified in the notice and transfer. Any party holding such notice and failing to present written notice of the same to the drawer thereof before 4 P. M. (except on Saturdays, and on Saturdays not later than 2 P. M.)

of the business day before the one specified therein for delivery of cotton shall subject himself to a penalty of one hundred and twenty-five dollars for each notice, to be paid to the drawer thereof, the contract to remain in full force.

No member of the Exchange shall make a fictitious or fraudulent use of any name or names to fill up the time in the issue or transfer of any notice for future delivery of cotton on contract; and any member who shall be found guilty by the Future Committee of such fictitious or fraudulent use of any name or names shall, in such case, pay to the party with whom the notice may lodge at the close of the day a penalty, by way of damages, of one-quarter (¼) of one cent per pound; and in addition thereto may, upon a repetition of the offense, be suspended by the Board of Directors.

The Superintendent of the Exchange shall, at the close of each day, post on the bulletin of the Exchange the price at which transferable notices shall be issued on the following day. The price so posted shall be within ten one-hundredths of one cent per pound of the closing price for like deliveries.

### WHEN TRADING IN CURRENT MONTHS SHALL CEASE.

RULE 24. All trading in current months shall cease at noon on the last business day upon which transferable notices may be issued. Transferable notices may be issued on that day at any time up to fifteen minutes after twelve o'clock noon in fulfillment of all trades. Every transfer of a notice issued under this Rule shall be made within ten minutes of the time of receipt. Every notice issued under this rule shall be accepted in fulfillment of any contract for future delivery. Except as herein provided, all provisions of Rule 23 in regard to transferable notices shall apply to notices issued under this Rule.

RECORD OF DELIVERIES ON CONTRACT. PENALTY FOR FAILURE TO HAVE NOTICES STAMPED.

RULE 25. SECTION 1.—A record shall be kept by the Superintendent of the Exchange of the demands stamped each day (as required in Section 5 of Rule 22), and each transferable notice shall be considered one hundred bales. The total number of bales so delivered shall be posted daily at 2:30 o'clock. P. M.

SEC. 2.—Failure on part of the holder of a transferable notice to have his notice of demand so stamped shall subject him to a penalty of twenty-five dollars per contract, to be paid to the deliverer of the cotton, the contract to remain in full force.

SETTLEMENT OF CONTRACTS.

RULE 26. SECTION 1. In case of failure to deliver any portion of the cotton named in the contract when due, no obstacle having been made by the buyer, the basis of settlement of cotton due on such contract for default in delivery shall be 25/100c per pound above the quotations for spot cotton of the day of delivery. And if failure to receive any portion of the cotton named in contract shall prove to be the fault of the buyer, the settlement shall be made at the quotations for spot cotton of the day following, with the addition of 25/100c per pound in favor of seller. Provided, however, that no seller shall be entitled to receive penalty, unless he has given the stipulated notice of intention to deliver; and no buyer (who has not received notice), unless demand is made by him six days before expiration of the contract. Provided, also, that no defaulting party can claim settlement under this rule, except upon evidence that the default was unintentional and not premeditated. Nothing, however, in this rule shall be construed to prevent a settlement by mutual agreement. No claim under this rule shall be allowed unless the variation is in excess of five hundred (500) pounds.

In event cotton tendered for delivery under the contract is rejected as not deliverable upon the contract, pursuant to findings of the Secretary of Agriculture, upon a dispute referred to him, the seller shall be regarded as having failed to deliver within the meaning of this Rule that portion which is so rejected.

Failure to make delivery of or to receive and pay for press or warehouse receipts and notices or certificates of grade in the manner and within the time specified in these rules shall be regarded as a default on the contract, and settlement of such, with penalty attached, shall be made, as above provided.

No provision in this Rule shall be construed as permitting any deviation from the obligation on the seller to tender and on the buyer to receive the full number of bales involved in the contract, except as provided in Rule 50.

SEC. 2.—Any member who may find that he holds for account of various constituents, contracts, both of sale and purchase, in same month which offset each other, shall be authorized to offset and settle such contracts and to substitute therefor other names than those to or from whom he originally sold or purchased; provided, that in such cases he shall be deemed guarantor to his principals for the strict fulfillment of such contracts, and shall be liable to them for all damage or loss they may sustain by reason of such substitution.

### PAYMENT FOR COTTON DELIVERED ON CONTRACTS.

RULE 27. The member receiving a warehouse receipt and notice or certificate of grade shall at once pay to the member presenting the same, by a certified check, the amount due for the cotton at the price of the transferable notice, with additions or deductions for grade as determined under provisions of Section 6 of the United States Cotton Futures Act. Bill to be rendered as provided in Rule 22.

Provided, however, that in event a deliverer tenders cotton upon his own notice or certificate of grade, the receiver shall pay only ninety (90) per cent of the price of the cotton to the deliverer, and deposit the remaining ten per cent through the Exchange in trust to be paid over to the parties as their interests may appear on receipt of the findings of the Secretary of Agriculture, or to be paid over to the parties upon the ascertainment of their interests in any other manner under the contract prior to the receipt of such findings.

Deposits through the Exchange under this Rule are at the risk of the party to whom the money may be due, and in case of failure of any bank or trust company in which such money has been deposited, it shall be at the loss of the party or parties to whom it may be found due.

CERTIFICATED COTTON DAMAGED BY FIRE.

RULE 28. Any certificated cotton damaged by fire, smoke or water shall not be considered a good delivery on contract except as hereinafter provided.

In case of fire occurring in a licensed or approved place for the storage of cotton, in which is stored any certificated cotton, the Inspector-in-Chief shall forward to the Superintendent of the Exchange a list of the lot numbers and bales of all lots of cotton contained in such storage places as have been at all damaged by fire, smoke or water. This list shall be at once posted on the bulletin of the Exchange, and no lots of cotton on said list shall thereafter be considered a good delivery on contract except as hereinafter provided.

Any cotton which has been actually on fire shall be deemed unmerchantable and shall in no case be considered a good delivery on contract.

In the case of any cotton which is supposed to have been only slightly damaged by smoke or water, or which is contained in

storage places so damaged, the Inspector-in-Chief shall, at the request of the owner of any such lot or lots of cotton, have the cotton examined, and, if necessary, put in proper order by picking or otherwise, so that the cotton shall be in every way in a sound and merchantable condition, and after such examination such cotton shall be a good delivery upon contract under the certificate of grade previously issued therefor, which shall continue in full force and effect.

The expense of such examination shall in each case be deter-

## AMENDMENT TO RULE 29, FUTURE RULES.

(Adopted by the Board of Directors June 7th, 1916; posted June 8th, 1916; effective on and after June 18th, 1916.

Expunge the words "twenty-three and one-half cents" in the fourth line of Section 1 of Rule 29, Future Rules, page 99 (1915 edition), and substitute therefor the words "twenty-five cents."

The section, as amended, will then read:

SECTION 1.—The charge for inspecting, sampling, examining (including the classing of the cotton by the Board of Classers) and the issuing of a certificate of grade by the Inspector-in-Chief, shall be twenty-five cents per bale, one-half of which shall be paid by the receiver of the cotton to the party making delivery. In the event of the classification by the Board of Classers being appealed from, there shall be an additional charge of sixteen cents per bale to cover the expense of classing by the Appeal Committee on Classification; where the decision, upon appeal, is in favor of the party making the appeal, he shall be liable for no costs, but the same shall be defrayed from the Inspection Fund. Costs of any appeal shall not aggregate less than Twelve Dollars. There shall also be a charge of ten cents per bale on all bales offered for inspection that are rejected, all of which charges may be varied from time to time by the Board of Directors.

The bills for these charges shall be rendered by the Inspector-in-Chief to the party by whom the inspection is ordered, and the Inspector-in-Chief shall furnish a memorandum of such bills to both the Superintendent and Treasurer of the Exchange.

bales offered for inspection that are rejected, all of which charges may be varied from time to time by the Board of Directors.

The bills for these charges shall be rendered by the Inspector-in-Chief to the party by whom the inspection is ordered, and the Inspector-in-Chief shall furnish a memorandum of such bills to both the Superintendent and Treasurer of the Exchange.

SEC. 2.—All bills for classing, inspecting and weighing cotton shall be rendered weekly and shall become due and payable at once, and if any party shall fail to pay the same, or an approximate amount, within one week from the date on which the bills were rendered, he shall be deemed in default, and shall be notified by the Inspector-in-Chief that he is deprived of all rights and privileges under the Inspection Rules until such bills are paid.

SEC. 3.—The Superintendent of the Exchange shall collect said charges, returning the same to the Treasurer of the Exchange, who shall keep the same separate from the other funds of the Exchange, and the same shall be known as the Cotton Exchange Inspection Fund; provided, however, that whenever the said fund shall exceed the sum of Seventy-five Thousand Dollars, then the Board of Directors may, in its discretion, apply such excess or any part thereof to such purposes of the Exchange as it shall deem necessary and proper, and shall restore such excess or any part thereof to said fund at any and such times as it becomes necessary.

SEC. 4.—From this fund shall be paid, as a first charge, the salaries of the Inspector-in-Chief, the Assistant Inspectors, the members and Clerk of the Board of Classers, and the Samplers and Weighers, also the fees of the Appeal Committee on Classification, and such necessary expenditures as may be required by the Inspector-in-Chief in the management of his office.

### STORAGE AND TRANSFER OF CERTIFICATED COTTON.

RULE 30. SECTION 1.—Certificated cotton shall be stored only in approved places for the storage of cotton, as provided in these rules.

Each Pressman or Warehouseman shall notify the Inspector-in-Chief of the Exchange of the removal of the cotton from the press or warehouse, with the names of the parties receiving the same.

SEC. 2.—Certificated cotton may be transferred from one storage place to another under the direction of the Inspector-in-Chief.

### RESPONSIBILITY FOR FALSE-PACKED.

RULE 31. The Cotton Exchange Inspection Fund shall be responsible to the last receiver or shipper for any false-packed cotton (represented by any press or warehouse receipt which is accompanied by an Inspector's certificate of grade) in the manner prescribed in the Spot Rules.

The party for whom the cotton was inspected shall be responsible to the Cotton Exchange Inspection Fund, as provided in the Spot Rules.

## ORM OF CLASSIFICATION RETURNS.

lassing cotton, the following form of return shall be made:

| and-ard | Off Color | Spotted | Yellow Light Tinged | Yellow Med. Tinged | Yellow Tinged | Blue Tinged | Yellow Light Stained | Yellow Med. Stained | Yellow Stained | Flash Dust | Gritty | Staple |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | | |

prescribed by the contract; no returns to be made of non-deliverable grades.

## AMENDMENT TO RULE 32, FUTURE RULES.

(Adopted by the Board of Directors March 2, 1916; Posted March 2, 1916; Effective on and after March 15, 1916.)

Amend Rule 32, page 102 (edition of 1915) of the Future Rules, by substituting for the words "Blue Tinged" at head of the seventh column the words "Blue Stained."

CLAIMS ON INSPECTION FUND—HOW MADE.

RULE 33. SECTION 1.—Any member of the Exchange who holds a negotiable warehouse receipt and an Inspector's certificate of grade, may withdraw from storage place the cotton represented thereby and avail himself of his claim, if any, upon the Cotton Exchange Inspection Fund, provided such claim be allowed by the Inspection Bureau, which shall charge five cents per bale for such examination.

SEC. 2.—No recourse shall be had upon the party by whom the inspection was first ordered (except for false or fraudulent packed cotton), nor upon any party who shall at any time have held said warehouse receipt and certificate. The Cotton Exchange Inspection Fund shall not be liable nor responsible for the correctness of any certificates issued by the Inspector-in-Chief as to the grade or staple of the cotton referred to in such certificates, but said fund shall be responsible for clerical errors. No claim against said fund, however, shall be entertained unless it is made before the cotton leaves the port of New Orleans, except in case of false packed cotton, as provided in Rule 31.

When inspected cotton is rejected on reinspection, its value shall be based upon the closing bid quotations for the current month on the day of rejection by the Classification Committee or the Appeal Committee on Classification or by the Secretary of Agriculture. No claim for rejection on inspected cotton shall be valid unless presented within fifteen days after final rejection is determined.

CLAIMS ON INSPECTION FUND—ORDER OF PAYMENT, ETC.

RULE 34. SECTION 1.—Claims upon the Cotton Exchange Inspection Fund, when allowed, shall be paid by the Treasurer out of the fund in the order in which they are presented.

SEC. 2.—If at any time the said fund shall not be sufficiently

large to pay all the claims upon it, as well as the salaries and expenses provided for in Rule 29, the said claims shall be received and filed, and shall be paid in the order of their receipt as soon as money available for that purpose shall have been paid into said fund.

SEC. 3.—In no case or event shall the New Orleans Cotton Exchange assume or be made liable for any charge, expense or claim whatsoever against the Cotton Exchange Inspection Fund.

INSPECTION BUREAU MAY BE USED BY THE TRADE IN SPOTS AND "TO ARRIVE."

RULE 35. Members wishing to deliver cotton sold "to arrive," or spot sales from samples shown, from depots, landings or elsewhere within the limits of the Port of New Orleans, and desiring the co-operation of the Inspection Bureau to make such deliveries, may do so upon the following conditions: That the owner shall furnish the Inspector-in-Chief of the Cotton Exchange a statement of the cotton to be delivered, and the time and place selected for delivery, before four o'clock p. m., of the day previous to delivery, if such delivery is to commence before twelve o'clock noon of the next day; and before ten o'clock a. m., of the day of delivery, if delivery is to take place after twelve o'clock noon of that day, in order that the Inspector-in-Chief may detail an Assistant Inspector to take charge of such delivery, to whom licensed parties shall report before commencing delivery, and who shall weigh (if desired), label and mark samples, and weigh and deliver to proper owners all loose cotton and pickings. The owner shall also as a further condition, pay to the Inspection Fund ten cents per bale and the cost of weighing for each and every bale so delivered, which sum shall be collected by the Superintendent of the Exchange in the same manner as is provided for the collection of charges for inspecting cotton.

## AMENDMENT TO RULE 35, FUTURE RULES.

(Adopted by the Board of Directors January 5th, 1916; Posted January 6th, 1916; Effective January 15th, 1916.)

Amend Rule 35 of the Future Rules by addition of the following in the last paragraph, viz:

Fees for inspecting, sampling, examining, classing and comparing samples, or for either, shall be paid to the Exchange by the party ordering the same, irrespective of the interest of opposite parties therein; but this shall not void any claim that the party so ordering may have against such opposite parties for such fees, provided that where both parties to a transaction join in requesting an arbitration which may require inspecting, sampling, examining, classing, or comparing samples, the bill for fees shall be rendered to the party whose claim differs most from the final award.

Requests for arbitrations must be made in writing signed by both parties thereto specifying their respective claims.

pler, clerk or any other agent, shall be allowed to interfere by word or deed, directly or indirectly, with the inspection or weighing of cotton. In case of such interference, the inspection or weighing of the cotton shall be at once stopped, and the party ordering the inspection or weighing shall pay the necessary expenses incurred by the Inspector or Weigher by reason of his order.

### LOST SAMPLES—STORAGE CHARGE FOR SAMPLES.

RULE 38. SECTION 1.—When samples of inspected cotton have become lost or destroyed, it shall be the privilege of the owner of the cotton to have the same resampled at his own expense, under the direction of the Inspector-in-Chief, having first delivered to

the Inspector-in-Chief the press or warehouse receipt, upon which shall be stamped the weight of such redrawn samples which shall be deducted from the weight of the cotton.

SEC. 2.—On samples not retained by the Inspector-in-Chief, if not withdrawn within one week after issuance of certificate of grade, a storage charge shall be made of one cent per sample per month or any part of a month.

### TYPE STANDARDS.

RULE 39. The present Type Standards, which are the official cotton standards of the United States, as established and promulgated by the Secretary of Agriculture, pursuant to Section 9 of the United States Cotton Futures Act, shall govern all transactions for delivery under these rules. Should, however, the Secretary of Agriculture at any time change or replace the present standards, under authority conferred upon him by the Congress of the United States, then the new standards, when they become effective, shall be the basis of settlement of all contracts then existing, whether or not the value of such contracts is thereby affected.

### HOLIDAYS—HOW BROUGHT ABOUT; THEIR EFFECT ON NOTICES AND DELIVERIES.

RULE 40. SECTION 1. All contracts falling due on legal holidays, or such holidays as are prescribed by the By-Laws or ordered by the Exchange, shall be completed on the preceding business day, and transferable notices shall be given on the fifth business day previous to the day preceding such holiday.

SEC. 2. When the fifth business day previous to the date of

delivery falls on a holiday, the next preceding business day must be substituted for the issue of transferable notices. When the day of delivery falls on the day following a holiday, the next preceding business day must be substituted for the termination of the circulation of transferable notices.

SEC. 3. No day, except a legal holiday, can be declared a holiday, and the transaction of business in futures be suspended unless five business days' official notice shall have been given; provided, that the Board of Directors may, by two-thirds majority of its members present and voting, have the power, in their discretion, without previous notice, in cases of special emergency, to close the Exchange on such days or portions of days as will, in their judgment, serve to promote the best interest of the Exchange.

## TRANSACTION OF BUSINESS.

### HOURS OF BUSINESS.

RULE 41. SECTION 1. The hours for the opening of transactions in futures (except those relating to the transfer of notices and the delivery of cotton sold upon contract) shall be 9 A. M., and the closing thereof shall be 2 P. M., except on Saturday, on which day the hour for closing shall be 11 A. M. throughout the year.

The Superintendent or an Assistant shall sound the gong adjacent to the ringside at the hours designated by rule for the opening and closing of trading, and the said sounding shall be accepted as definitely determining such opening and closing. Should at any time the gong not be in order, the Superintendent or his Assistant shall announce the opening and closing by use of the gavel.

SEC. 2. Trading, or offering to trade, in contracts for the future delivery of cotton by members of the Exchange, except on business days, and within the hours for the transaction of business in futures as prescribed by these Rules, is positively prohibited and forbidden; and any member violating this provision shall, upon

complaint being made to the Board of Directors, be fined One Hundred (100) Dollars, and for the second offense be suspended or expelled at the discretion of the Board of Directors.

SEC. 3. Contracts for the future delivery of cotton, made or agreed to be made in other than the duly prescribed hours, shall not be noticed in any public report or printed circular issued by the Exchange, or in any manner recognized, acknowledged or enforced by the Exchange or any officer thereof.

SEC. 4. Dealings, or offering to deal, in "puts" and "calls" on the floor of this Exchange is strictly forbidden, and any member violating this Rule, for the first offense, shall be censured; for the second offense, suspended; and for the third, expelled. The Floor Committee and the various officers of the Exchange are charged with reporting any violation of this Rule.

## PRIORITY OF BIDS—LIMIT OF DECIMALS.

RULE 42. All offers to buy or sell cotton for future delivery, on the floor of the Exchange, must be open to the member first accepting such offer for the whole or any part of such offer, but an acceptance of the whole quantity shall take precedence over an acceptance of any part. Any dispute arising from such offer, except on call, must be settled by the member making the offer submitting the question to the members present; the decision of the majority shall govern.

All offers to buy or sell cotton for future delivery shall be in cents and decimal fractions of a cent; and no transactions in contracts shall be permitted wherein the difference in price shall consist of a smaller fraction than one one-hundredth (1/100) of one cent per pound for each pound of cotton represented by such contract or contracts, nor shall any additional moneyed consideration whatever be allowed.

All transactions in contracts at split prices are hereby expressly prohibited. For any violation of this prohibition, or of any part

of this Rule, the Floor Committee may punish the offending person or persons by imposing a fine of not less than Twenty-five Dollars nor more than Fifty Dollars, at their discretion.

## REPORTING SALES.

RULE 43. SECTION 1. The prices at which all transactions in contracts are made for the future delivery of cotton under Rule 1 shall be reported promptly by the seller to the Collector of the Exchange, giving the exact time and terms and the names of the party making the report only.

SEC. 2. Any transaction made in any month above the price at which such month is offered, or below the price that is bid for such month, until what is offered shall be taken, or what is bid for shall be supplied, shall not be deemed the market price for such month or months, and shall not be reported in the record of transactions; nor shall any transaction that is not reported by open outcry and across the trading ring be deemed a transaction that can be reported or recorded in the record of transactions.

SEC. 3. Any member who shall be found guilty of reporting false sales shall be expelled.

## DUTY OF BROKERS AND PRINCIPALS.

RULE 44. When a member of the Exchange acts as a broker for another, it shall be his duty to give his principal a memorandum of transactions for that principal's account; and it shall be equally the duty of the principal to get such a memorandum from his broker.

## REGISTRY OF OFFICES FOR SERVICE OF NOTICE AND DELIVERY OF ORDERS.

RULE 45. Every member of the Exchange shall keep on file with the Superintendent of the Exchange a designation of an office with in half a mile of the Exchange building, at which all notices of any

kind whatever, and all orders for cotton may be served upon him; and if any member shall fail to comply with the provisions of this Rule, the delivery of any notice or order to the Superintendent of the Exchange shall be considered a good service upon and delivery to him.

## TRADING BETWEEN MEMBERS OF SAME FIRM.

RULE 46. No two (2) members of the same firm, nor any principal and his power of attorney, shall trade openly at the same time on the same month.

## SIGNING OF CONTRACTS OR SLIPS.

RULE 47. It shall be the duty of the seller, on the day on which transactions in contracts take place, or at not later than 9 A. M. on the following day, to furnish a contract or slip, and deliver his own already signed, and the opposite one in blank to the buyer; the latter shall then sign his contract, or slip, and return it to the seller.

All slips or contracts, which shall contain a statement of all the facts prescribed in Section 4 of the United States Cotton Futures' Act, must be signed by the member himself or his firm, except on the following conditions: That he or they duly execute and file with the Superintendent a special power of attorney, in such form as may be prescribed by the Board of Directors, authorizing signature of his or the firm name to slips or contracts bought or sold, said power to be valid and binding upon him, or his firm, until formally revoked, and notice of revocation publicly announced by being posted on the bulletin of the Exchange.

All slips shall be in form as follows:

New Orleans, .....

SOLD TO

....., of New Orleans, Louisiana, and agreed to deliver them subject to the By-Laws, Rules and conditions

of the

NEW ORLEANS COTTON EXCHANGE

and subject to the United States Cotton Futures' Act, Section 5, .....bales of cotton.....delivery at..... cents per pound for Middling.

.....

of New Orleans, Louisiana.

New Orleans, .....

BOUGHT FROM

..... of New Orleans, Louisiana, and agreed to receive from them subject to the By-Laws, Rules and conditions

of the

NEW ORLEANS COTTON EXCHANGE

and subject to the United States Cotton Futures' Act, Section 5, .....bales of cotton.....delivery at..... cents per pound for Middling.

.....

of New Orleans, Louisiana.

## CALLS.

RULE 48. There shall be three public calls for the sale and purchase of cotton contracts at the Exchange rooms on all business days, except Saturdays, on which day there shall be two calls, to be conducted by the Superintendent, or, in his absence, by an employee of the Exchange to be selected by the President or Vice President. The hours for the calls shall be such as shall be designated from time to time by the Board of Directors.

The call shall be by months, beginning with that current, and continued through the list of months so far as there is a desire to trade.

The first offer to sell or buy at a price shall be first accepted before subsequent offer at same figures may be placed. Offers to sell or buy may be withdrawn (if not accepted) at the option of the parties offering.

Subsequent offers to sell at a lower or buy at a higher shall vacate prior offers to sell at a higher or buy at lower prices. A transaction shall vacate all previous bids and offers.

All disputes as to offers, acceptances, or withdrawals (whether in time or not) shall be decided upon the spot by the officer (or person presiding for the time being), subject to an appeal to the members present.

If an appeal is taken, the question shall be put promptly, and a majority of the members present and voting upon the disputed point shall settle the same finally.

## COMMISSIONS.

RULE 49. The following rates of commission are the lowest which may be charged on transactions hereinafter named:

SECTION 1. Seven dollars and fifty cents for each and every 100 bales bought or sold when the transaction is made for any person not a full member of the Exchange, making the round transaction

(buying and selling) Fifteen Dollars; this Rule being equally applicable to extension or transfer of contracts from one month to another.

SEC. 2. Three dollars and seventy-five cents for each and every 100 bales bought or sold, when the transaction is made for a full member of the Exchange, making the round transaction (buying and selling) seven dollars and fifty cents; this Rule being equally applicable to extension or transfer of contracts from one month to another.

SEC. 3. The above mentioned rates shall be in each case the minimum commission, which may be charged by any member of the Exchange, and shall be absolutely net and free from all and any rebate, in any way, shape or manner, nor shall any bonus or pro rata percentage of commission be given or allowed to any clerk or individual for business procured or sought for any member of the Exchange.

SEC. 4. The penalty for violating or evading, or seeking, offering, proposing, promising or agreeing to violate or evade the above rule concerning commission or brokerage, in any way, shape or manner whatsoever, whether by an agreement, arrangement or understanding, expressed or implied, either directly or indirectly, in person or through any firm or copartnership of which he may be or may appear to be a partner, or through any agent or agents, or otherwise, shall be, upon conviction:

(a) For the first offense, suspension for a period of not less than six nor more than twelve months, the term of suspension to be fixed at the discretion of a majority of the Board of Directors present at a meeting thereof.

(b) For the second offense, expulsion.

Proceedings for the suspension or expulsion of any member to be had as provided under the Constitution of the Exchange.

## RULINGS ON COMMISSION LAW.

1. A round transaction must be considered as dating at time of initiation and not at time of completion. Commissions must be applied accordingly.

2. No arrangement of any kind is permissible that will in any way, manner, shape or form affect the *net* result to a member as his commission for buying and selling contracts as provided in the Commission Rules. Any deviation from this, whether it be in the form of allowance or charge for interest, or in any other shape or manner, is a violation of the Rule.

3. The employment of a member of the Exchange by a firm or firms, whether on salary, commission or otherwise, does not entitle such firm or firms to the benefits of the rules as members. To obtain such benefits, one or more members of such firm must be full members of the Exchange.

4. Any agreement whereby a monthly salary for obtaining business, or a variable monthly charge for the use of a wire, is an evasion of the rules.

5. The commendam partnership of a member of the Exchange in a firm not otherwise represented on the Exchange does not entitle such firm to have its business done at members' rates.

6. No member can represent more than one house upon the floor of the Exchange for the purpose of securing for such firm the reduced commission. A special partner cannot represent a firm at all.

7. It is permissible for members of the Exchange to employ a member or non-member of the Exchange as an agent, whether such agent is resident or non-resident, upon a salary, provided:

(a) That such salary is not on a sliding scale, contingent upon the amount of business obtained.

(b) That the engagement of such clerks or agents is for a period of not less than one year.

(c) That the name of such agent and the terms of the agree-

ment between the parties shall be set forth in writing to the Committee on Commissions, which, after considering both the terms of the proposed agreement and the character and reputation of such agent, may approve or disapprove the same. If approved, a duly signed and authenticated copy of the agreement shall be filed with the Superintendent of the Exchange.

(d) That a certificate of the fact that the full amount of the salary or compensation agreed upon has been paid to said agent or employee shall be also filed with the Superintendent of the Exchange at the expiration of the time of service, or each year therof.

(e) That such agent shall be in the employ of not more than one firm, and that his sole and entire occupation shall consist of such employment, to the exclusion of any other business or occupation whatever.

(f) Members of firms shall be held responsible for any acts of their said agents which are in violation of the Commission Rule.

(g) The provision of this ruling shall apply in all cases where a member is employed upon a salary by another member or another member's firm for the purpose of soliciting business.

8. No rebate whatever is permissible under the Commission Rules. Brokers doing business for members of the Exchange must charge the rate of commission prescribed for full members. If these members, in turn, trade for non-members, they must charge the non-member the full rates stipulated in the Rules.

9. No waiver of commission is permitted when a trade is executed, whether the result of an error or not.

10. A corporation engaged in the cotton business and whose managing officer is a member of the Exchange, is entitled to the minimum rate of commission on contracts made through him for account of such corporation; provided, that membership in the Exchange by a *director* who is not the managing officer of such corporation shall not entitle said corporation to the minimum rates of commission. In no case, however, can a member represent more than one house or corporation.

11. The rule permitting a firm of which only one partner is a member of the Exchange to have their business done at the minimum rate of commission applies only to regular articled firms doing the cotton business, and not a mere association of two or more parties for purposes of speculation. Such associations should pay the maximum rate of commission.

12. The manager of a branch office established by a firm, members of the New Orleans Cotton Exchange, and having no interest in the firm, cannot receive a share of the profits of the branch office as compensation for the management thereof.

13. The full maximum commission must be charged in the case of delivery of cotton on a contract. The delivery being considered as constituting a round transaction.

14. The full rate of commission must be charged in a case where a non-member gives an order for a full member and neglects to instruct the broker to carry the contract in the member's name.

15. It is not necessary that a commission should be charged to a person for whom contracts are being carried and who disposes of his business to another. Such transfer not being considered in the nature of an ordinary purchase or sale of contracts in the open market.

16. The constitutent of a suspended firm is not liable to the said firm for one-half commission for contracts in his name with them, when such contracts are replaced. The suspended firm having failed to fulfill its obligations to its constituents.

17. If the partners in a firm doing business in New Orleans and some other place or places are the same and their interest identical in both concerns, but for the sake of convenience different titles are used for the New Orleans and other houses, all of the concerns are entitled to have their business transacted at the minimum rate of commission.

18. It is not permissible for a broker having contracts in the name of a firm outside of New Orleans and contracts in the name

of the agent representing said firm in New Orleans to offset the firm's contracts against the agent's contracts, or vice versa, and charging but one commission, unless both contracts are made in the firm's name and only when they constitute a round transaction.

19. The holding of a membership by a paid employee of a firm cannot be extended so as to give a concern of which he may become a member the advantage of Exchange membership to that concern. No membership can be used in a dual capacity.

20. It is not permissible for a firm or a private wire house to pay an operator's salary at an interior point.

21. Commissions must be charged on all transactions, whether made in error or otherwise, regardless of whether losses or gains do or do not accrue.

22. There is no objection to one member paying to another member a fixed monthly rental for the part use of a wire, such rental to be a reasonable and adequate sum, the particulars of the same and the price and time agreed upon to be placed on record with the Superintendent of the Exchange. If, for any reason, it should become necessary or advisable to discontinue the agreement, both parties to the agreement shall make application to the Committee on Commissions, which, after full investigation, may consent to its cancellation. A so-called "fixed toll" per 100 bales, even though in lieu of telegraphic charges or rental, would be in violation of the spirit of the Commission Law.

Members may, by the consent and approval of the Committee on Commissions, establish branch offices. Such offices must be in charge of either a partner, or of a manager or clerk acceptable to said Committee. The member or firm establishing a branch office shall register it with the Superintendent of the Exchange, and shall be directly responsible for the conduct of its business.

The managing clerk and all other employees must be paid fixed salaries, not varying with the business.

Members leasing private wires must file with the Superintendent

of the Exchange a list of all places reached by said private wires, and also a list of all branch offices, agents or correspondents at each point on said wire, same to be subject to the approval of the Committee on Commissions.

23. It is not permissible under the Commission Law for a firm operating private wires to transmit or allow to be transmitted without charge over its wires telegrams from one party to another referring directly or indirectly to any business in cotton or to anything bearing on the cotton market, except where one of the parties sending or receiving the telegram leases the private wire, nor is it permissible for a future brokerage firm to pay for the transmission over the public wires of telegrams or telephone messages from one party to another referring directly or indirectly to any cotton business or to anything bearing on the cotton market.

24. It is not permissible under the rules for a firm operating a private wire system to pay expense of a telephone line running into the country from a correspondent's office to various points, for use of customers.

25. It is necessary for a member of the Exchange soliciting business for another member or firm represented by membership in order to obtain a rebate on all non-member business that the orders be carried in his name and on his responsibility.

26. It is entirely permissible for an employer to increase the salary of an employee, provided such increase is on a yearly basis, as required by the rules.

27. No salaried employee is entitled to receive rebate commissions on any business that he may control for the firm who employs him.

28. It is not permissible for a private wire house to pay salaries of operators at relay stations where such stations are occupied also by another firm, unless the office is operated by and at the expense of the house owning the private wire through a salaried employee or resident partner of such private wire house. If the interior cor-

respondent of a wire house is a member of the Exchange and participates in the commissions derived from the business, he should defray all expenses of operators employed at his office in the interior.

29. It is contrary to the rules for a firm to employ a member at a stipulated salary for a period of one year with the provision that the member guarantee the firm business in excess of his salary or to make good the difference should he fail so to do.

30. It is permissible for a broker to bear the cost of telegrams or telephone messages to or from a customer when such message pertains to an order for the future delivery of cotton.

31. It would be a violation of the Commission Rule to allow interest to a customer on money deposited on Margins.

32. An honorary member of the Exchange is entitled to have his future business transacted at members' rates.

33. On contracts executed for a firm which subsequently goes into liquidation and transfers contracts to another firm, not members of the Exchange at the time of the transfer, a member's rate of commission should be charged on the end of the contract made while the firm were members and on the other half of the contract the non-member's rate should apply.

34. The acceptance of the services of any person regularly employed by any telegraph company, or having any other occupation, for a compensation of whatever nature, is in violation of Ruling 7 of the Commission Law.

The soliciting of orders by anyone on a salary or other remuneration constitutes that person the agent of individual or firm for whom business is solicited.

This employment brings the solicitor within the terms of Ruling 7, which permits a member or firm to employ a party to solicit business, provided the engagement is for a period of not less than one year, that the compensation be a fixed yearly one, and that the party be in the employ of not more than one firm, and that his sole

and entire occupation consists of such employment to the exclusion of any other business or occupation whatever.

35. It is permissible for members to bear the cost of C. N. D. Service in any town or towns throughout the cotton section or elsewhere.

36. It is not permissible, as a broker, to share any portion of the expense involved in the operation of Cotton Exchanges at interior points.

37. No paid official or employee of any Exchange or Board of Trade can act as a representative or agent of a broker for the purpose of securing business.

## RINGS AND MARGINS.

### CANCELLING CONTRACTS AND RING SETTLEMENTS.

RULE 50. SECTION 1. All contract for the future delivery of cotton shall be binding upon members, and of full force and effect until the quantity and qualities of cotton specified in such contracts shall have been delivered, and the price specified in said contracts shall have been paid. Nor shall any contract be entered into with any stipulation or understanding between parties, at the time of making such contract, that the terms of said contract, as specified in Rule 1, are not to be fulfilled, and the cotton received and delivered in accordance with said rule. Provided, however, that any party holding a contract against another, corresponding in all respects, except as to price, with one held by the other party against him, may close or cancel both by giving notice in writing to the opposite party, at any time before notice of delivery.

SEC. 2. All "ring" settlements shall be made at the bid prices posted by the Superintendent at 12:30 P. M. on the day on which the "ring" is made, except on Saturdays, when all "rings" shall be settled at the bid prices posted by the Superintendent at 10 A. M., as provided for in Rule 52, governing margins, and bills

## AMENDMENT TO RULING 35 ON THE COMMISSION LAW.

JULY 6, 1916.

(Approved by the Board of Directors July 6th, 1916; posted July 7th, 1916.)

Add the following at end of ruling 35 as it now reads, viz:

"Provided said C. N. D. Service is not to be used in connection with the operation of a Cotton Exchange."

The Ruling, as amended, will then read:

RULING 35.—It is permissible for members to bear the cost of C. N. D. Service in any town or towns throughout the cotton section or elsewhere, provided said C. N. D. Service is not to be used in connection with the operation of a Cotton Exchange.

Trade can act as a representative on

## AMENDMENT TO FUTURE RULES.

(Adopted by the Board of Directors March 1, 1916; Posted March 2, 1916; Effective March 12, 1916.)

Amend Rule 50 of the Future Rules, page 120 (New Edition), by inserting after the word "made" in the third line of Section 2, the words "and on the last day of the month on which notices may be issued such settlements shall be made at the 10:30 a. m. bids."

The Section as amended will then read:

"SEC. 2.—All 'ring' settlements shall be made at the bid prices posted by the Superintendent at 12:30 p. m. on the day on which the 'ring' is made, and on the last day of the month on which notices may be issued such settlements shall be made at the 10:30 a. m. bids, except on Saturdays, when all 'rings' shall be settled at the bid prices posted by the Superintendent at 10 a. m., as provided for in Rule 52, governing margins, and bills on 'rings' or direct settlements, shall be rendered by 11 a. m. of the day after that on which such 'ring' or settlement shall have been made, and must be paid by 2 p. m. of the day on which they are rendered, except on Saturdays, when they must be paid before 11:30 a. m., under a penalty of 6/100c per pound as liquidated damages. The party making a 'ring' shall notify all the parties thereto, who shall be compelled to accept the same; he shall get their initials in acknowledgment, leaving with each a copy thereof. If the 'ring' is not complete he shall, on the same day, notify all the parties thereto. The contract of the earliest date shall in all cases be the one considered settled."

## AMENDMENT TO RULING 36 OF RULINGS ON COMMISSION LAW.

(Adopted by the Board of Directors December 6th, 1916; posted December 7th, 1916; effective December 7th, 1916)

Amend Ruling 36 of Rulings on Commission Law, page 120, by addition of the following:

"Nor can any member of the New Orleans Cotton Exchange, who is a broker, join or become a member or contributor to any Exchange or Commercial body in the United States that is not regularly incorporated under the laws of the State in which it is located."

The ruling as amended will read:

## RULING ON COMMISSION LAW.

(Adopted by the Board of Directors December 6th, 1916; posted December 7th, 1916; effective December 7th, 1916)

At a meeting of the Board of Directors held on the 6th instant, the following Ruling on the Commission Law, to be known as Ruling 38, was adopted, viz:

RULING 38.—It is not permissible, unless it is for a regularly salaried employee, for any member to contribute towards securing use of, or, carrying of a share or shares of Exchange stock for another member or applicant for membership, at less than the regular market rate therefor, such contributions being in the light of a rebate.

## AMENDMENT TO SECTION 2, RULE 50 OF THE FUTURE RULES.

(Adopted by the Board of Directors March 8th, 1917; Posted March 8th, 1917; Effective March 19th, 1917.)

Amend Section 2 of Rule 50 of the Future Rules as amended March 1st, 1916, by expunging that part of the Section beginning with the word "all" in the first line, down to the word "damages" in the twelfth line, and substituting therefor the following:

All ring settlements shall be made at the bid prices posted by the Superintendent at the close of business on the last business day preceding that on which the ring is made; and bills on "rings" or direct settlements, shall be rendered by 12 o'clock noon of the day after that on which such ring or settlement shall have been made, and must be paid by 2 P. M. of the day on which they are rendered, except on Saturdays, when they must be rendered by 10:30 A. M. and paid before 11:30 A. M., under a penalty of 6-100c. per pound as liquidated damages.

The Section as amended will read as follows:

## AMENDMENT TO RULING 36 OF RULINGS ON COMMISSION LAW.

(Adopted by the Board of Directors December 6th, 1916; posted December 7th, 1916; effective December 7th, 1916)

Amend Ruling 36 of Rulings on Commission Law, page 120, by addition of the following:

"Nor can any member of the New Orleans Cotton Exchange, who is a broker, join or become a member or contributor to any Exchange or Commercial body in the United States that is not regularly incorporated under the laws of the State in which it is located."

The ruling as amended will read:

## RULING ON COMMISSION LAW.

## RULING ON THE COMMISSION LAW.

(Adopted by the Board of Directors April 11th, 1917; Posted April 11th, 1917; Effective April 11th, 1917).

At a meeting of the Board of Directors held on the 11th instant, the following Ruling on the Commission Law, to be known as Ruling 39, was adopted, viz:

"It is permissible under the Commission Law for a member to contract with a non-member as agent at a stipulated yearly salary coupled with a condition that losses arising from business secured by said agent may be shared by both parties to the contract. Provided that this ruling shall not be considered as in contravention of paragraph (a) of Ruling 7."

## AMENDMENT TO SECTION 2, RULE 50 OF THE FUTURE RULES.

(Adopted by the Board of Directors March 8th, 1917; Posted March 8th, 1917; Effective March 19th, 1917.)

Amend Section 2 of Rule 50 of the Future Rules as amended March 1st, 1916, by expunging that part of the Section beginning with the word "all" in the first line, down to the word "damages" in the twelfth line, and substituting therefor the following:

All ring settlements shall be made at the bid prices posted by the Superintendent at the close of business on the last business day preceding that on which the ring is made; and bills on "rings" or direct settlements, shall be rendered by 12 o'clock noon of the day after that on which such ring or settlement shall have been made, and must be paid by 2 P. M. of the day on which they are rendered, except on Saturdays, when they must be rendered by 10:30 A. M. and paid before 11:30 A. M., under a penalty of 6-100c. per pound as liquidated damages.

The Section as amended will read as follows:

Rule 50—Sec. 2—All "ring" settlements shall be made at the bid prices posted by the Superintendent at the close of business on the last business day preceding that on which the ring is made; and bills on "rings" or direct settlements, shall be rendered by 12 o'clock noon of the day after that on which such ring or settlement shall have been made, and must be paid by 2 P. M. of the day on which they are rendered, except on Saturdays, when they must be rendered by 10:30 A. M. and paid before 11:30 A. M., under a penalty of 6-100c. per pound as liquidated damages. The party making a "ring" shall notify all the parties thereto, who shall be compelled to accept the same; he shall get their initials in acknowledgment, leaving with each a copy thereof. If the "ring" is not complete he shall, on the same day, notify all the parties thereto. The contract of the earliest date shall in all cases be the one considered settled.

AMENDMENT TO RULING 36 OF RULINGS ON

on "rings" or direct settlements, shall be rendered by 11 A. M. of the day after that on which such "ring" or settlement shall have been made, and must be paid by 2 P. M. of the day on which they are rendered, except on Saturdays, when they must be paid before 11:30 A. M., under a penalty of 6/100c per pound as liquidated damages. The party making a "ring" shall notify all the parties thereto, who shall be compelled to accept the same; he shall get their initials in acknowledgment, leaving with each a copy thereof. If the "ring" is not complete he shall, on the same day, notify all the parties thereto. The contract of the earliest date shall in all cases be the one considered settled.

SEC. 3. Any party who, at the request of another, transfers a contract, or substitutes another for one held by him, shall receive seven and a half (7½) cents a bale as compensation for making the change, but this transfer fee shall not be paid by any member who, in the legitimate discharge of his duty as a broker, tenders the name of his principal before the close of the Exchange hours on the day on which the transaction was made.

SEC. 4. Margins may be called after a "ring" is formed until differences are paid. No interest shall be charged.

SEC. 5. All brokerages for making settlements, transfers and changes in contracts shall be paid by the party employing the broker.

SEC. 6. Where a transfer of contract of a "ring" has been verbally agreed upon by all parties, and all have been notified, it shall be in force from the time of the acknowledgment, and can not be broken by the failure of any party thereto.

## ORIGINAL MARGINS.

RULE 51. SECTION 1. Either party to a contract for the future delivery of cotton shall have the right to call an original margin of from One to Five Dollars per bale at the time of signing the regular

contract, or at any time prior thereto, and may also demand that One Dollar per bale of the amount so called shall, within one hour after the receipt of such demand, be deposited with the Superintendent of the Exchange in certified checks. The party calling must put up and deposit an amount equal to that called by him. Margins may be called, and shall be put up on verbal contracts, and on a slip as memorandum of contract in all respects as is herein prescribed in case of a regular contract. Provided, that all demands for original margins on verbal contracts or slips must be made within twenty-four (24) hours after the transactions upon which such original margins are called.

SEC. 2. On all contracts entered into prior to February 18, 1915, for delivery on and after February 18, 1915, not in accordance with the provisions of the United States Cotton Futures Act, and which might become liable to tax under said United States Cotton Futures Act, ten dollars ($10.00) per bale shall be callable to liquidate said tax, and said amount shall be deposited through the Exchange and shall not be drawn down until such contracts are declared free of taxation by the proper authorities or the tax shall have been paid.

## MARGINS ON DIFFERENCES.

RULE 52. SECTION 1. When a contract provides for demanding a margin, notice in writing, requiring the same, must be deposited at the office of the party from whom the margin is called; and if the office of the party is unknown or closed, it shall be delivered to the Superintendent of the Exchange, who shall endorse thereon the time of its receipt and promptly post the same on the bulletin of the Exchange. When such notice is given before 12 o'clock M. the margin must be deposited by 2 o'clock P. M. of the same day, except on days when the closing hour of business is prior to 12 M.; on such days margins called before 10 A. M. must be deposited be-

fore 11:30 A. M.; and if called after 10 A. M., must be deposited before 12 M. of the following day.

When notice is given after 12 o'clock M. the margin must be deposited before 12 M. of the next day, except in cases of calls for One Dollar per bale original margin, as provided for in Rule 51, which must always be deposited within one hour from the receipt of the demand therefor. The Superintendent of the Exchange shall, every day, at 10:30 o'clock A. M. and 12:30 o'clock P. M., post on the bulletin of the Exchange the bidding price for each

contract, or at any time prior thereto, and may also demand that One Dollar per bale of the amount so called shall, within one hour after the receipt of such demand, be deposited with the Superintendent of the Exchange in certified checks. The party calling must put up and deposit an amount equal to that called by him. Margins may be called, and shall be put up on verbal contracts, and on a slip as memorandum of contract in all respects as is herein prescribed in case of a regular contract. Provided, that all demands for original margins on verbal contracts or slips must be made within twenty-four (24) hours after the transactions upon which such original margins are called.

## AMENDMENT TO RULE 52 OF THE FUTURE RULES

(Adopted by Board of Directors October 4th, 1916; posted October 5th, 1916; Effective October 15th, 1916.)

Amend Rule 52 of the Futures Rules, Section 1, pages 122 and 123, by substituting for the figures "11:30" in the eleventh line of the section, the figures "10:45."

The section, as amended, will then read as follows:

Section 1. When a contract provides for demanding a margin, notice in writing, requiring the same, must be deposited at the office of the party from whom the margin is called; and if the office of the party is unknown or closed, it shall be delivered to the Superintendent of the Exchange, who shall endorse thereon the time of its receipt and promptly post the same on the bulletin of the Exchange. When such notice is given before 12 o'clock M. the margin must be deposited by 2 o'clock P. M. of the same day, except on days when the closing hour of business is prior to 12 M.; on such days margins called before 10 A. M. must be deposited before 10:45 A. M.; and if called after 10 A. M., must be deposited before 12 M. of the following day.

fore 11:30 A. M.; and if called after 10 A. M., must be deposited before 12 M. of the following day.

When notice is given after 12 o'clock M. the margin must be deposited before 12 M. of the next day, except in cases of calls for One Dollar per bale original margin, as provided for in Rule 51, which must always be deposited within one hour from the receipt of the demand therefor. The Superintendent of the Exchange shall, every day, at 10:30 o'clock A. M. and 12:30 o'clock P. M., post on the bulletin of the Exchange the bidding price for each month dealt in, and if there are no bids the last sale reported. These prices shall govern all calls for margins. All margins called before 12 o'clock M. shall be put up at the prices posted at 12:30 o'clock P. M. of the same day, except on days when the closing hour of business is prior to 12 M.; on such days margins shall be put up at the prices posted at 10 o'clock A. M., and all margins called after 12 o'clock M. shall be put up at the prices posted at 10:30 o'clock A. M. of the following business day. If any party fails to deposit any margin called for in accordance with the contract and Rule 51, the other party may close the contract at his option by giving written notice of his decision to do so. The party in default shall then account to the other party for the difference between the contract price and the average quotations of the Cotton Exchange for that day, for like deliveries, with an allowance against the defaulting party of 25-100s per pound.

SEC. 2. The passing of any transferable notice shall not prevent the calling of margins on contracts any time before the day of delivery.

SEC. 3. The Board of Directors shall select such bank or banks in good standing, and members of the New Orleans Clearing House, to act as depositories or margins, as they shall deem proper.

## BANKS FOR DEPOSIT—MARGIN CERTIFICATES—SETTLEMENTS—RISKS.

RULE 53. SECTION 1. When margins are called for variations in the market, certified checks must be drawn to order of any one of the banks selected by the Board of Directors; said bank to be designated by the party calling.

SEC. 2. Certified checks for original margin and margins called as above must be sent to the Superintendent of the New Orleans Cotton Exchange, who shall deposit them and get a "certificate of deposit," made payable on the order of the Superintendent of the New Orleans Cotton Exchange and to the order of the buyer and seller. As soon as the Superintendent has received the certificate he shall send it to the party making the deposit, and an abstract of same to the party calling the margin. In settlement, the Superintendent shall ascertain the amount due each of the parties at interest, and shall endorse the amount due on the certificate over his own signature, as instructed by both parties. In case the two parties do not agree as to the amount due each on such certificate, either of them may refer the matter to the Arbitration Committee for decision, with right of either party to appeal from their decision to the Appeal Committee. On the decision of the Arbitration Committee, if not appealed from, or that of the Appeal Committee, if appealed to, the Superintendent shall promptly endorse to each party the amount each shall be entitled to by such decision. Original margins are at the risk of the party depositing them.

SEC. 3. Margins deposited for variations in the market are at the risk of the party to whom the money is actually due each day. In case of failure of any bank or trust company in which margins have been deposited, it shall be the loss of the party or parties to whom it may be found due, taking the average price of like deliveries on the day such bank or trust company failed as a basis of settlement.

## STANDING COMMITTEES.

### TITLES OF COMMITTEES.

RULE 54. The Board of Directors shall appoint the following Standing Committees, in addition to those provided for in Rule 5 of the Future Rules, viz: A Future Committee, a Supervisory Committee, a Committee on Commissions; also such other committees as the requirements of the business may demand.

### DUTIES OF COMMITTEES.

RULE 55. The Future Committee shall be composed of seven (7) members, and its duty shall be to supervise the transaction of the business in contracts for the future delivery of cotton, and to examine into all infractions of the rules, except those relating to failures.

Where there are evident infractions in posting transactions in future contracts, the Committee, or three members thereof, shall have the right to order immediate cancellation on the board of such transactions.

The Supervisory Committee shall be composed of five (5) members, three (3) of whom shall constitute a quorum for business. Its duties shall be to investigate all failures, and to examine into all infractions of the rules relating thereto.

The composition and duties of the Committee on Commissions shall be as prescribed in Rule 13 of the General Rules.

## ATTORNEYS.

### FORM OF POWER OF ATTORNEY.

RULE 56. Any person transacting business in contracts, as the representative of any house or firm in which he is not an advertised

partner, must file with the Superintendent of the Exchange a duly executed power of attorney in the following form, viz:

UNITED STATES OF AMERICA,
STATE OF LOUISIANA, PARISH OF ORLEANS,
CITY OF NEW ORLEANS.

Know all men by these presents:

That .....
of.....do hereby constitute and appoint, and by these presents do make, constitute and appoint ..... of .....true and lawful attorney to represent.....in the buying and selling of contracts for the future delivery of cotton, for..... and in.....stead, to perform all necessary acts as hereinbefore stated, in accordance with the By-Laws and Rules of the Exchange, which.....might legally do; hereby ratifying and confirming in all respects the act or acts of.....said attorney as fully as..... could do if personally present, and this.....power shall remain in full force and effect until after the expiration of twenty-four hours from the date of the posting upon the bulletin board at the Exchange room, by the Superintendent thereof, a notice of the revocation of the same.

All transactions in futures made under the "call" by a member holding a power of attorney shall be binding upon his principal or principals; and all transactions in contracts made by such member not under the "call" shall also be binding upon his principal or principals, unless it shall be distinctly stated and agreed upon in writing, by an exchange of slips at that time, that the transaction is for his own account. Provided, that no such power of attorney shall do any business for his own account unless he is a full member of the Exchange.

## FAILURE TO MEET LIABILITIES AND OBLIGATIONS AT MATURITY.

### VOLUNTARY NOTICES OF FAILURE.

RULE 57. Any member of the Exchange who shall find himself unable to meet his liabilities to, or obligations with, other members at maturity shall immediately communicate to the Exchange the fact of his inability so to do, by means of a letter addressed to the Superintendent, by whom it shall be at once posted on the bulletin of the Exchange, where it shall remain for five (5) days.

The posting of such a letter shall be considered as due and sufficient notice to all the members of the Exchange of the facts therein recited, and any contract for future delivery with the failed member or firm shall be closed in the open market not later than three business hours after such posting by the other party thereto, who shall promptly notify the failed member or firm of the time and price at which the contract was closed, which price shall be the basis of settlement between the parties to the contract. Any member of the Exchange holding a claim or contract against a member who has given notice of his failure may demand an investigation of the affairs of said alleged failed member by the Supervisory Committee, and if said Committee shall be of opinion and shall report to the Board of Directors that said member is able to meet and pay all his contracts and liabilities at maturity, he shall be debarred from the privilege of settlement under the provisions of this rule.

### FORCED NOTICES OF FAILURE—DUTIES OF MEMBERS.

RULE 58. If any member of the Exchange shall hold a claim or contract, either as principal or broker, against any other member who has not already been posted as failed, for or arising from the purchase or sale of cotton for future delivery, which is not settled or liquidated at maturity, he shall record the fact of the

failure of said other member to meet his liabilities, in a book kept by the Superintendent of the Exchange, entitled "Record of Failures," and if he shall omit or neglect so to do within ten (10) days after such failure occurs, he may, upon the recommendation of the Supervisory Committee, in the discretion of the Board of Directors, be suspended from the rights and privileges of membership in the Exchange for a period not exceeding one year. No claim or contract shall be considered settled or liquidated for the purposes of this rule except by cash payment or property actually delivered. As soon as the Record provided for in this rule is made in the "Record of Failures," the Superintendent shall deliver a copy thereof to the Supervisory Committee, who shall promptly examine the proofs of the charge, and if, in their opinion, the failure to meet obligations is proven, they shall instruct the Superintendent to promptly post upon the bulletin of the Exchange a notice of such failure, and keep it so posted for five (5) days.

## RECORD OF CLAIMS AGAINST FAILED MEMBERS.

RULE 59. Any member of the Exchange who holds a claim either as principal or broker, against any member of whose failure a notice has been posted, either by his own direction or by order of the Supervisory Committee, which claim has arisen on account of the purchase or sale of cotton for future delivery, shall record such claim in the "Record of Failures" within thirty (30) days after the posting of said notice, and if he fails so to do he shall forfeit all right under such claim to participation in the proceeds of the sale of the share of stock in the Exchange of said failed member.

## RIGHTS OF FAILED MEMBERS—SUPERINTENDENT'S DUTIES.

RULE 60. The Superintendent of the Exchange shall, within three (3) days after the expiration of thirty (30) days mentioned in the last preceding rule, serve upon the member of whose failure

a notice has been posted, or upon the legal representative of a deceased member, a copy of all the claims against him which have been recorded in the "Record of Failures," in accordance with the requirements of the last preceding rule. If the said member, or legal representative, or any of the creditors, shall dispute the correctness of any claim so recorded, the member, or legal representative, so objecting shall, within three (3) days after the expiration of the aforesaid three (3) days, file with the Superintendent a written notice specifying the grounds of his objection thereto, and the Superintendent shall, within three days after he receives such notice, deliver the same, together with a copy of the claim which it disputes, to the Arbitration Committee.

## ARBITRATIONS ON CLAIMS OF FAILED MEMBERS.

RULE 61. Upon receiving such claim and the objection thereto, the Arbitration Committee shall proceed to consider the same, and shall hear such testimony as may be offered by either the claimant or the objector, which shall, in the judgment of the Committee, be material and pertinent, and shall, within ten (10) days after such claim and objection is submitted to them, make, sign and file with the Superintendent of the Exchange an award thereon in writing. The Superintendent shall immediately record such award in the "Book of Decisions of the Arbitration Committee," and shall, at the same time, send by special messenger a notice of the recording of said award to each party interested therein, which notice shall specify the date and time of such recording, and in default of an appeal therefrom the said award shall be final and binding upon all the parties interested therein.

## APPEALS, LIMIT OF TIME FOR PAYMENT BY FAILED MEMBERS.

RULE 62. Within three (3) days after the award of the Arbitration Committee shall be filed, or, if there be an appeal from such award, within three (3) days after the decision thereon by the

Appeal Committee shall be filed, or if there shall have been no objection made to any claim, within three (3) days after the time allowed for filing such objections, the Superintendent shall serve upon the member of whose failure a notice has been posted, or upon the legal representative of a member whose death has been posted, a list of such claims as have been recorded, and to which no objection has been made, and a notice of the decision of the Arbitration Committee, or of the Appeal Committee (as the case may be), upon such claims as have been objected to, and if said member shall not within five (5) days pay such awards and claims, the Board of Directors shall declare his membership at an end.

## SCHEDULE OF FAILED MEMBERS.

### DUTY OF SUPERVISORY COMMITTEE.

RULE 63. When the failure of any member of the Exchange has been posted, either by his own act or by direction of the Supervisory Committee, he shall forfeit all the rights and privileges of membership, except such as relate to arbitrations on claims resulting from business transactions with members entered into before the posting of such notice of his failure.

The said member shall, within ten days after posting such notice of his failure, send to the Supervisory Committee a statement of his affairs and produce the books of account to them for full and free examination, which examination shall be made by and with the assistance of an expert accountant, the cost of whose services shall be charged to the estate of said member. No application for reinstatement shall be considered by the Supervisory Committee until after a full and complete report of the expert accountant herein provided for has been submitted to and examined by the Committee.

If any member who has been so posted as failed shall omit to send to the Supervisory Committee within said ten (10) days the statement required by this rule, or if said Committee, on an ex-

amination, shall be of opinion that the said member has conducted his business in a reckless and unbusinesslike manner, they shall so report to the Board of Directors, who may, by a two-thirds vote, declare such failed member disqualified for reinstatement.

## REINSTATEMENT OF FAILED MEMBERS.

RULE 64. Any member of the Exchange who, finding himself unable to meet his liabilities and obligations at maturity, shall cause notice thereof to be given to the members of the Exchange, as provided in Rule 57, and shall have made honorable settlement with his creditors, or shall have offered to pay them pro rata to the full extent of his ability, including the market value of his share of stock, may, within one year from the date of his failure, apply for reinstatement through the Supervisory Committee, who shall, within one week from the receipt thereof, report to the Board of Directors such application, together with the opinion of said Committee thereon, and the Board of Directors may, at any meeting subsequent to that at which said report is received, by a vote of two-thirds (2-3) of the members of the Board of Directors present and voting, reinstate such member upon his obtaining a new share of stock; but this rule shall not be construed to authorize the reinstatement of any member of whose failure a notice shall have been posted by order of the Supervisory Committee.

## AVERAGE QUOTATIONS.

RULE 65. In making the daily average quotations the Superintendent shall consider each report of prices for each month as a unit, dividing the aggregate by the number of reports made for such month. The results shall constitute the average quotations of that day for time contracts. When no sales for any month are reported at the Exchange the Committee on Future Quotations shall fix the quotations for such month if required.

## DECEASED MEMBERS.

### CONTRACTS WITH DECEASED MEMBERS.

RULE 66. It shall be the duty of the Superintendent of the Exchange, as soon as he shall learn of the death of any member, to post a notice of such death upon the bulletin of the Exchange, which notice shall be due and sufficient notice to all the members of the Exchange of the facts therein stated.

Any contracts for the future delivery of cotton, in which the member whose death is so announced shall have been the sole seller or buyer, or the only member of the Exchange in his firm, shall be closed in the open market not later than three business hours after such announcement by the other party thereto, who shall promptly notify the estate or firm of the deceased member of the time and price at which the contract was closed, which price shall be the basis of settlement between the parties to the contract.

It shall be the duty of every member of the Exchange, who shall hold a contract for the future delivery or receipt of cotton in which a member, of whose death a notice is posted as hereinbefore provided, shall have been sole seller or buyer, to present to the Superintendent of the Exchange, within ten (10) days after the posting of such notice, a statement of all such contracts, and any member holding any such contracts, and who shall fail to present such statement, may, in the discretion of the Board of Directors, be suspended from all the rights and privileges of membership, for any term not exceeding one year.

# COTTON SEED AND COTTON SEED PRODUCT RULES.

# Rules Governing Business in Cotton Seed and Cotton Seed Products

## COMMITTEE ON COTTON SEED AND COTTON SEED PRODUCTS.

### ITS DUTIES AND FUNCTIONS.

RULE 1. There shall be a committee of five members of the New Orleans Cotton Exchange, to be appointed by the Board of Directors, and subject thereto, who shall have general charge of all matters relating to the business in cotton seed and cotton seed products.

It shall be the duty of said Committee:

(a) To recommend from time to time to the Board of Directors such measures as they may deem necessary for the welfare and promotion of the business in cotton seed and cotton seed products.

### ARBITRATIONS.

(b1) It shall be the duty of said Committee to serve as an Arbitration Committee, which shall take cognizance of and decide all questions or differences referred to it relating to cotton seed or cotton seed products, and its decisions as arbitrators shall be final, whether the parties be members of the New Orleans Cotton Exchange or non-members, who have agreed in writing to submit to such decisions.

(b2) When serving as arbitrators, or otherwise, three (3) of said Committee shall constitute a quorum.

(b3) No member of the Committee shall serve as an arbitrator

who is or may be directly or indirectly interested in the matter at issue.

(b4) The Committee shall appoint one or more inspectors to carry out its instructions.

(b5) Each arbitrator acting on any one case shall be paid Five ($5) Dollars for such case, and inspection fees shall be allowed as fallows:

On Oil—Two and one-half cents (2½c) per barrel.

On Cake and Meal—Two Dollars ($2) per car for one or two cars; One Dollar ($1) per car from three to five cars, inclusive, and Fifty Cents (50c) per car for each and every car in excess of five cars.

On Cake and Meal by Boat—The fees shall be in the same proportion as allowed for inspection by cars, and twenty tons of cake or meal by boat shall be considered as equivalent to a car.

The arbitrators, in their award, shall decide by whom the expenses of arbitration shall be paid.

## PRIVATE SETTLEMENTS.

(b6) Nothing in these Rules shall be construed as preventing private settlements by mutual agreement of both parties to a transaction.

## LINTERS.

(c) It shall be the duty of the Committee on Cotton Seed and Cotton Seed Products to have made up and kept at the rooms of the New Orleans Cotton Exchange four (4) classes of linters, graded A, B, C and D, and disputes, if any, regarding class, etc., are to be decided by said Committee.

## QUOTATIONS.

(d) It shall be the duty of the Committee on Cotton Seed and Cotton Seed Products to furnish at such times as it may deem

necessary and proper, quotations of cotton seed, cotton seed meal, cake, oil and linters, which shall be posted in the Exchange rooms.

## GENERAL RULES.

RULE 2. All offers, sales or purchases of cotton seed oil (or other cotton seed products) shall be understood, unless specified to the contrary, to be F. O. B. cars at the mill, and on the basis of prime quality. Unless specially stated, oil shall be considered as sold loose, and the buyer shall furnish tank cars.

RULE 3. All sales of cotton seed products, unless otherwise specified, shall be for cash, payment to be made by resident buyers, on presentation of invoice with railroad ticket signed, or bill of lading attached, showing delivery of goods to the carrier, in good order.

RULE 4. Payment of non-resident buyers shall be by sight or demand draft, with bill of lading attached, showing delivery of goods to the carrier in good order, unless otherwise agreed. Exchange not to exceed one-fourth of 1 per cent. on F. O. B. mill purchases.

RULE 5. When goods are delivered to the carrier as agreed, whether in whole or partial completion of trade, payment for same shall become due, if presented during banking hours, and all risks belong to the buyer.

RULE 6. On all sales of cotton seed products to or through regular brokers, the seller shall pay the brokerage unless otherwise specially agreed.

RULE 7. On all trades by telegraph, day messages requiring day answer shall be open until 12 midnight of the day on which sent. Night messages shall be open till noon following the night on which sent. The time when telegrams are filed in telegraph office sending same, to govern, and this rule to apply only when no specific time is stated in the original offer.

RULE 8. Rules governing trades in cotton seed products are only applicable in the absence of a specific written contract stating special conditions, but either party to a trade may demand a formal written or printed contract as soon as the trade is completed. Such contracts, unless specially excepted, being subject to all the Rules of the New Orleans Cotton Exchange.

RULE 9. All sales in cotton seed products shall be either immediate, prompt, or specified dates of delivery.

(1) Immediate shall be within five working days.

(2) Prompt shall be within ten working days.

(3) Specified dates according to contract.

In all cases the bill of lading shall be evidence of date of shipment from country mills.

## BUYERS' TANKS.

RULE 10. In case the buyer furnishes tank cars, shipments of same by buyers shall be as follows:

(1) Immediate shipment, within five days.

(2) Prompt shipment, within ten days.

(3) Specified shipment shall be in such time that, under ordinary course of transportation, cars shall reach seller in time to allow him to make delivery as per contract.

RULE 11. If more than one tank car is to be furnished for the same delivery, under one transaction, the first car only shall be shipped as above, and the balance shall follow as rapidly as the seller can, with certainty, load the same.

Seller shall, in all cases, load cars within forty-eight hours of arrival at destination.

## TIME CONTRACTS.

RULE 12. When a time contract is made for any one of the products of a mill, with a date specified for the expiration, and the

quantity or quality, or both, are not stipulated, it is understood to be for all the possible output of the particular products named, that can be made from seed worked up to midnight of the last day named in the contract; the whole to be put in proper condition for shipment as speedily as possible after the date of expiration of contract.

RULE 13. In all time contracts it is understood that the mill is to run to its full capacity and to use every means known to produce goods of the quality stipulated when so named, and if failure to do either or both of these appears intentional, then both actual and consequential damages may be awarded by the Arbitration Committee.

In case mill burns, the contract is void, except in regard to goods on hand, in warehouse, etc.

## CLAIMS.

RULE 14. All claims against shipments of cotton seed products must be made within five days after their arrival at American point of destination, except the products for export, in which case thirty days shall be allowed.

RULE 15. All sales made F. O. B. New Orleans shall be considered closed and seller free from all liability upon furnishing to buyer clean receipts from vessel, buyer having had the privilege of inspection before loading, or, if buyer accepts goods, delivery shall be considered as having been made.

On C. I. F., or delivery contracts to exporters, no claim from any foreign market will be entertained without the proper samples of the goods are taken and preserved previous to their leaving the American shore, unless samples are drawn before removal from foreign dock, and such samples are taken in accordance with the Rules of the Exchange or Board of Trade of the port of delivery.

RULE 16. All claims to be brought before the Committee of the New Orleans Cotton Exchange must be accompanied by an

affidavit from a reliable party, substantially in the following form, describing and identifying the samples submitted as taken from and fairly representing the entire shipment.

FORM OF CLAIM.

RULE 17.

I, the undersigned, do hereby make affidavit that I have drawn fair and true samples from.....
package of.....being not less than.....per cent. of the entire number of packages embraced in a shipment made by.....
.....from....., as evidenced by bill of lading dated.....and issued by.....

The samples were carefully taken so as to secure a fair representation of the contents of the individual package, and a true average of the quality of the entire shipment.

I certify to the correctness of the samples, which are marked as follows: .....
and which represent the shipment marked or identified as follows:
..... ..... or contained in.....

Sworn to before me.....

## CRUDE COTTON SEED OIL.

MEASUREMENT.

RULE 18. A tank (tank car) of cotton seed oil for contract purposes shall be one hundred and twenty-five barrels. A barrel of oil, if sold loose, of fifty gallons. A gallon of oil is 7½ pounds avoirdupois.

RULE 19. Crude cotton seed oil may be sold either loose or in barrels as agreed between seller and buyer. If in barrels, they shall

be good, hardwood, iron-bound barrels, either new or second-hand, as may be agreed upon. Packages must be in good shipping order, and contain not less than 48 gallons each. On delivery of other than the above barrels, an allowance of fifty cents per barrel shall be made by seller.

## CLASSIFICATION.

RULE 20. Crude cotton seed oil shall be classed and graded as follows: Choice crude must be made from sound decorticated seed; must be sweet in flavor and odor, light in color, free from water and settlings, and test not over 1 per cent. F. F. A.; shall produce, when properly refined, choice Summer Yellow Oil, at a loss in weight not exceeding 6 per cent. for Texas oil, and at a normal loss for oil from all other parts of the country.

RULE 21. Prime Crude.—Crude cotton seed oil to pass as prime must be made from sound decorticated seed, must be sweet in flavor and odor, free from water and settlings, and must produce prime Summer Yellow grade, by the usual refining methods, with a normal loss in weight: provided, the oil shall not be rejected for a nominal amount of settlings, but reasonable reduction shall be made in value for all such settlings in excess of ¼ of 1 per cent. F. F. A., not to exceed 1½ per cent.

RULE 22. Off Oil.—All oil, neither choice nor prime, shall be called "off" oil and shall be sold by sample.

## REFINED COTTON SEED OIL.

RULE 23. Refined cotton seed oil shall be classed and graded as follows: Summer Yellow only being considered.

RULE 24. Choice.—Must be sweet in flavor and odor, of light straw-color, clear and brilliant in appearance, free from moisture, and must bleach to a choice white.

RULE 25. Prime.—Must be clear, sweet in flavor and oder, and

of yellow color, not reddish, free from water and settlings.

RULE 26. Off.—To be classed as off refined. All oils having any objectionable flavor or odor.

Off Yellow Oil.—To be of a yellow, and not a reddish color.

## SOAP STOCK.

RULE 27. All sales, unless otherwise agreed upon by buyer and seller, are sold on a basis of fifty per cent., fatty acid not to fall below forty per cent. If containing less than forty per cent. of fatty acid, soap stock shall not be considered merchantable. Delivery to be made in iron-bound, hardwood packages or tank cars.

## COTTON SEED CAKE.

RULE 28. A ton of Cotton Seed Cake for export is 2,240 pounds, unless otherwise agreed.

RULE 29. Cotton Seed Cake shall be graded and classed as follows:

Choice Cake—Must be bright yellow in color, sweet in odor, soft and friable in texture, not burnt in cooking, without excess of hulls, and must produce, when properly ground, a bright meal of deep canary color.

RULE 30. Prime Cake—Must be of good yellowish color, not brown or reddish, sweet in odor, firm, but not flinty in texture, free from excess of hulls, and must produce, when properly ground a prime meal. (See Rule 32.)

RULE 31. Off Cake—All grades of Cotton Seed Cake which are distinctly off in color, taste or odor, or cake which has been improperly manufactured so as to incorporate in it a very large percentage of lint or hulls, or to produce an exceedingly hard, flinty texture.

Light yellow colored and dark greenish-yellow colored cake

packed in same bags or included in one shipment, shall not be considered as prime.

RULE 32. Cotton Seed Cake, unless otherwise specified, shall be packed in good, strong, sound Dundee bags, either new or second-hand, at the option of the seller, unless specified in the contract. Packages must be well sewed and in good shipping order.

## COTTON SEED MEAL.

RULE 33. A ton of cotton seed meal for export is 2,240 pounds, unless otherwise stated. A sack of cotton seed meal is 100 pounds gross weight.

Cotton Seed Meal shall be classed and graded as follows:

RULE 34. Choice—Must be the product from choice cotton seed cake when finely ground; must be perfectly sound, sweet and light yellow color (canary), free from excess of lint and hulls.

RULE 35. Prime—Must be made from prime cake, finely ground, of sweet odor, reasonably bright in color, yellow, not brown or reddish, and free from excess of lint or hulls.

RULE 36. Off—Any Cotton Seed Meal which is distinctly deficient in any of the requirements for prime quality, either in color, odor, or texture, or all.

RULE 37. Cotton Seed Meal—Shall be packed in good, sound Cental or Laplata bags, either new or second-hand (except where otherwise stipulated for packages designed for export in kilo or other bags), 100 pounds weight, which must be well sewed and in good shipping order.

## COTTON SEED.

RULE 38. A ton of cotton seed is 2,000 pounds. A carload of cotton seed is fifteen tons.

RULE 39. Cotton seed shall be divided into two classes: Prime seed and off seed.

RULE 40. Prime Seed—Shall be clean, dry, sound seed, free from dirt, trash and bolls.

RULE 41. Off Seed. Seed not coming up to the requirements of Prime Seed shall be considered Off Seed. Off or damaged seed shall be settled for on its merits and comparative value as against value of standard Prime Seed.

RULE 42. Delinted Seed—A ton for export is 2,240 pounds. The seed shall be properly delinted, sound, and made of prime seed; shall be packed in good, strong, sound bags.

## RULES FOR EXPORT TRADE.

RULE 43. All contracts of cotton seed products shall be understood, unless specified to the contrary, to be based upon shipside delivery at railroad dock terminals with the payment against carrier's bill of lading. Cost of discharging cars, if not included in rate of freight, to be deducted from invoice.

RULE 44. Contracts based on terms F. O. B. steamer shall be construed as meaning payment against clean ship receipts.

RULE 45. On all contracts made delivered ex-levee, ex-cars, shpiside or F. O. B. steamer, seller is responsible to buyer for weights at railroad dock terminals or discharging point, it being optional with buyer to have weights tested by public weigher, and should any deficiency be found, seller shall make such deficiency good and pay the expenses of re-weighing. Same to be done within three (3) weather working days after unloading of cars.

RULE 46. All claims on account of quality on shipments of cotton seed products must be made within thirty days of notice of arrival of cars.

RULE 47. Unless mutually agreed upon, samples shall be drawn by the official Inspector of the New Orleans Cotton Exchange.

RULE 48. In case shipments should not be up to contract quality, the buyer shall have the option of rejecting entirely or

taking delivery at an allowance to be fixed by arbitration, but seller shall have the right to replace, provided this be done within forty-eight hours, failing which buyer shall have the privilege of replacing for account of the seller.

RULE 49. Oil in barrels, if necessary, shall be coopered and weighed at port of loading at expense of seller.

RULE 50. Barrels for export must not contain less than fifty gallons each.

# GENERAL RULES.

# GENERAL RULES.

## FORM OF SEAL.

RULE 1. The corporate seal of this Exchange shall consist of the device of a bale of cotton bound with six hoops, and surrounded by the words, "NEW ORLEANS COTTON EXCHANGE," in a circle.

## MEMBERSHIP AND STOCK.

RULE 2. Any member-elect or visiting member-elect failing to pay his dues, within ten days after official notification of his election, shall be considered as suspended until such time as he shall have paid them.*

Visiting members failing to pay the annual dues by or before the 25th of November shall be dropped from the Exchange list.

RULE 3. Members in arrears are not allowed to vote.

RULE 4. SECTION 1. Any partner of a deceased member, after being duly elected a member of the Exchange, will be admitted to the privileges thereof on signing the Constitution and procuring a share of stock in the Exchange, to be held in his own name, and against the annual dues of the current year chargeable to him, will be entitled to a credit for the due already paid for the unexpired portion of said current year by his deceased partner.

SEC. 2. Any member failing to comply with the following requirements may, on recommendation of the Committee on Membership, be suspended by the Board of Directors from membership of the Exchange:

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* See Article 13 of the By-Laws.

All members of the Exchange having general, special or any other kind of partners must file with the Superintendent a memorandum thereof, together with a statement of their place or places of business. Notices of subsequent changes in partnership or of discontinuance of partnership must be filed within five days with the Superintendent, and such notice shall be posted on the bulletin of the Exchange for ten days after the date of filing.

Whenever it shall appear that a member has, or has formed, a partnership or established a branch office whereby the interests or good repute of the Exchange has suffered or may suffer, the Board of Directors may, on recommendation of the Committee on Membership, require the immediate dissolution of such partnership or discontinuance of such branch office.

RULE 5. All withdrawals of members, whether by resignation, suspension or otherwise, must be promptly posted in the Exchange rooms; and when resignations are tendered either formally or by transfer of stock, the party so resigning shall not, pending action by the Board of Directors upon the resignation, be entitled to any of the rights or privileges of membership.

RULE 6. No employee of any local firm, or firm with an office in New Orleans, is eligible to represent any out-of-town member of the Exchange not a member of such firm, as power of attorney or clerk, on the floor of the Exchange, except on payment of dues as prescribed in Section 3 of Article 16 of the By-Laws.

Powers of attorney given by members to their clerks, under Article 16 of the By-Laws, to visit the Exchange rooms during the absence or sickness of the member, shall not be recognized unless the person to whom same is given is of legal age.

## NOTICES AND VISITING CARDS.

RULE 7. No notice shall be posted upon the Exchange boards except by the Superintendent or by his assistants.

RULE 8. All writing or pencil-marking on the books or records

of the Exchange, by members, or others not employed in the Superintendent's office, is positively prohibited.

Nor shall articles of any kind, including cotton plants, bolls, specimens of crops, agricultural implements, models thereof, etc., etc., be introduced into or exhibited on the Exchange floor without the consent of the President.

Documents not appertaining to Exchange matters shall not be exposed in the rooms for signature without consent of the President.

Members of the Exchange are prohibited from using the Exchange office, except on official business with officers of the Exchange.

RULE 9. Employees in the Superintendent's office are not allowed to furnish information from the Exchange boards to members through their clerks.

RULE 10. Visitors' tickets to the rooms of the Exchange, except as hereinafter provided for, shall be good for not more than ten days, and shall not be renewed except after an interval of sixty days' absence from the city of the holders thereof. Cards of admission for shipmasters may be extended ten days at a time, for a period not exceeding thirty days, the extensions to be entered on the visitors' register. All cards must be issued from the Secretary's office, and only on request of a full member.

The names of all visitors to the Exchange shall be entered on the visitors' register.

At the written request of ten members, the President shall revoke any visitor's card, but written notice thereof must be sent the party at whose request the card was issued, in order that he may have an opportunity to withdraw same.

RULE 11. The President is authorized to issue visitors' tickets to residents of the city, and to extend complimentary invitations to visit the Exchange at any time, to any person, and for any period he may deem proper.

RULE 12. No cards of admission to the Exchange rooms shall be granted to applicants for membership or visiting membership

during the pendency of their applications, unless specially issued by the President of the Exchange.

## STANDING COMMITTEES.

RULE 13. The Board of Directors shall, in addition to the committees provided for by Section 3 of Article 3 of the By-Laws, appoint the following standing committees.

*A Committee on Insurance,* to consist of three members of the Exchange, who shall be authorized to confer with committees of the Board of Underwriters and Chamber of Commerce, on matters relating to the insurance of cotton in transit to this port, and, in conjunction with the former, to determine from time to time the valuation of cotton for insurance.

*A Committe on Supervision and Deliveries,* to consist of the President *ex officio,* at least one member of the Board of Directors, who shall be Chairman, and four members interested in the trade.

*A Floor Committee,* to consist of seven members, whose duty it shall be to mtaintain order on the floor of the Exchange, and to call attention to any violation of the rules or breach of decorum.

*A Committee on Exchange Quotations,* to consist of three members.

*A Committee on Protection of Shipping* to consist of seven members.

*A Committee on Rules,* to consist of five members.

*A Committee on Futures,* to consist of nine members.

*An Appeal Committee on Classification,* to consist of seven members.

*A Committee on the Building,* to consist of three (3) members, who shall have general charge of the building, renting of offices therein and repairs, interior and exterior, subject to the Board of Directors.

*A Freight Discrimination Committee,* to consist of eight members.

*A Weather Committee,* to consist of three members, who shall report daily, in writing, the condition of the weather to govern deliveries of cotton from depots.

*A Supervisory Committee,* to consist of five members.

*The Committee on Information and Statistics* shall act as Meteorological Committee, whose duty shall consist of promoting the maintenance of the Signal Service Bureau, and who shall, from time to time, make such suggestions to the Board of Directors as may, in their opinion, conduce towards perfecting the information obtained by the Exchange in their department. Notice of all changes in this Committee shall be transmitted without delay to the Chief Signal Officer at Washington.

*A Committee on Commissions,* to consist of five members, at least one of whom shall be a member of the Board of Directors and Chairman of the Committee. Said Committee to be charged with the consideration and decision of all questions that may arise under the Commission Law, subject to approval of the Board of Directors. Said Committee to receive and present to the Committee on Membership all complaints of any violation of the Commission Law.

*A Committee on Legislation,* to consist of four members, whose duties shall be to watch the interests of the Exchange in matters of legislation, either State or Federal.

SEC. 2. A Committee shall be appointed by the Board of Directors to be styled the *General Arbitration Committee,* which shall have the settlement of all claims arising from transactions between members (subject only to the right of appeal to the General Appeal Committee, as hereinafter set forth), excepting such as are provided for in the first paragraph of Articles IX and XIV of the By-Laws, and such as may arise from questions of classification of cotton.

All claims before said General Arbitration Committee and answers thereto shall be submitted in writing, and the opposite party shall have a reasonable time in which to make reply (not less than five or more than ten days), and both parties shall have the right to have summoned before the Committee such witnesses as they may desire to have examined in their behalf. It being provided that no claim shall be considered by said Committee unless notice in writing of such claim and of the intention to demand an arbitration thereon has been served by either party upon the opposite party or parties thereto within fifteen days from the discovery thereof.

The decision of said General Arbitration Committee shall be binding, subject only to an appeal to the General Appeal Committee, which appeal shall be made within three (3) business days after notice has been given of such decision, accompanied by a certified copy of same.

Each arbitrator acting on any one case shall be paid Five Dollars ($5) for such case, and the arbitrators in the award shall decide by whom the expenses of the arbitration shall be paid.

Said General Arbitration Committee shall consist of seven members, a majority of whom shall constitute a quorum.

SEC. 3. *A General Appeal Committee* shall be appointed by the Board of Directors, and shall consist of five (5) members of the Exchange, three (3) of whom shall constitute a quorum for the

## AMENDMENT TO RULE 14, GENERAL RULES.

(Adopted by the Board of Directors June 7th, 1916; posted June 8th, 1916; effective on and after June 18th, 1916.

Amend second paragraph of Rule 14 of the General Rules, page 155 (1915 edition), by striking out the words "caused by the sickness or absence of members from the city," and substituting therefor the following: "due to sickness, absence from the city or any other cause."

The paragraph, as amended, will then read:

The President is also authorized to fill temporary vacancies in any committee due to sickness, absence from the city or any other cause.

lacking such quorum by reason of the absence of members thereof from the city.

The President is also authorized to fill temporary vacancies in any committees caused by the sickness or absence of members from the city.

RULE 15. SEC. 1. The Finance Committee shall, in making loans, stipulate that in case of the depreciation of collaterals they shall call for additional securities or money to make good the original margin, and, in case such additional margin is not furnished, the loan shall be considered as matured, and the Treasurer shall be authorized to sell the securities in his hands and apply the proceeds of same to the payment, in full or in part, of said loan.

SEC. 2. The Chairman or Acting Chairman of the Finance Committee and the Treasurer or Acting Treasurer shall jointly have access to and control over the Bank Safes rented by this Exchange, and whenever it shall be necessary to deposit securities or other valuables or papers belonging to or held by the Exchange in said Bank Safes, or to remove such securities or papers from said safes, it can only be done jointly by the persons above provided. No other parties shall under any circumstances have access to the Bank Safes rented by the exchange.

## COMPOSITION OF COMMITTEE ON SPOT QUOTATIONS, [illegible] SPOT MARKET

## AMENDMENT TO RULE 16, GENERAL RULES.

(Adopted by the Board of Directors March 2, 1916; Posted March 2, 1916; Effective on and after March 15, 1916.)

Amend Rule 16, pages 155 and 156 of the General Rules (edition of 1915), by expunging the words "Blue Tinged" in the 13th and 14th lines and substituting therefor the words "Blue Stained."

All claims before said General Arbitration Committee and answers thereto shall be submitted in writing, and the opposite party shall have a reasonable time in which to make reply (not less than five or more than ten days), and both parties shall have the right to have summoned before the Committee such witnesses as they may desire to have examined in their behalf. It being provided that no claim shall be considered by said Committee unless notice in writing of such claim and of the intention to demand an arbitration thereon has been served by either party upon the opposite party or parties thereto within fifteen days from the discovery thereof.

The decision of said General Arbitration Committee shall be binding, subject only to an appeal to the General Appeal Committee, which appeal shall be made within three (3) business days after notice has been given of such decision, accompanied by a certified copy of same.

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## COMPOSITION OF COMMITTEE ON SPOT QUOTATIONS, QUOTATIONS OF SPOT MARKET.

RULE 16. The Committee on Spot Quotations shall make up the official spot market of the Exchange daily, except on Saturdays, at 1 P. M., and on Saturdays at 10:45 A. M.

The Committee on Spot Quotations shall quote the following grades and half grades:

*Standard Cotton:* Full Grades: Low Ordinary, Ordinary, Good Ordinary, Low Middling, Middling, Good Middling, Middling Fair, and Fair.

Half Grades: Strict Good Ordinary, Strict Low Middling,

Strict Middling, Strict Good Middling, and Middling Fair to Fair.

Said Committee on Spot Quotations shall include in their daily reports the differences in values of the grades enumerated above for Off Colored, Spotted, Yellow Light Tinged, Yellow Tinged, Blue Tinged, Yellow Light Stained, and Yellow Stained.

The Spot Quotation Committee shall state in their reports that their quotations are based on the official Cotton Standards of the United States, and are for short staples or upland cotton.

Information given by brokers or others of their daily purchases or sales shall be considered confidential insofar as the names of the parties thereto are concerned.

RULE 17. The statements of daily receipts of cotton at this port shall include all arrivals prior to 12 M., allowing one hour for the delivery of manifests of boats arriving prior to 12 M.; no boat shall be considered as having arrived until moored to the levee.

RULE 18. SECTION 1. Any member of the New Orleans Cotton Exchange who shall be interested in or associated in business with, or who shall act as the representative of, or shall knowingly execute any order or orders for the account of any organization, firm or individual engaged in the business of dealing in differences on the fluctuations of the market price of cotton—commonly known as a bucket-shop—or for any one acting as agent for such organization, firm, corporation or individual, without a *bona fide* purchase and sale of property for an actual delivery, shall be deemed guilty of unmercantile conduct, which renders him unworthy to be a member of the Exchange, and upon conviction thereof shall be expelled from membership in the Exchange.

SEC. 2. Any member of the Exchange may, on recommendation of the Committee on Membership to the Board of Directors, for the first offense be fined not to exceed $250; for the second offense be suspended from the rights of membership for a term not exceeding one year, or may be expelled from membership of the Exchange, for publishing or permitting to be published, in his own name or

that of his firm, or that of any of his partners, employees or agents, in newspapers, circulars, or otherwise, any advertisement that contains any mis-statement of facts or is otherwise calculated to mislead the public, whether by direct or implied misrepresentation, or unfair concealment of facts, or that contains a request for money to be sent as margin for operating on discretionary orders, or any other matter that shall tend to bring discredit on the business of dealers or brokers in cotton, or upon the Exchange, or that shall have been disapproved by a majority of the Committee on Membership after such member shall have had an opportunity to be heard.

RULE 19. The hours of 11 A. M. to 12:30 P. M., and 2 to 2:30 P. M., daily, are declared "High 'Change Hours."

RULE 20. Committees certifying to the election or non-election of applicants for membership shall report for posting in the Exchange only the fact whether or not the parties are elected, without giving the number of votes "for" or "against," but said votes shall be certified to for information of the Board of Directors, and made known to members only when desired.

RULE 21. No continuous quotations of the New Orleans cotton future market shall be sent out from the floor of the New Orleans Cotton Exchange, unless the party who sends said quotations shall have first applied and received the written permission of this Exchange; the said party furnishing names and addresses of recipients and such other particulars as may be required, under the same penalty for violation that applies under Rule 18.

"Continuous Quotations," under this Rule, are quotations wherein the price of cotton shall be quoted oftener than at intervals of fifteen minutes.

# RULES OF ORDER.

# RULES OF ORDER.

## GENERAL RULES.

RULE 1. The Floor Committee shall have general charge of the floors of the Exchange for the maintenance of order and decorum, and for the prevention of angry disputes and difficulties between members while on said floors.

RULE 2. Said Floor Committee are authorized and empowered to institute fines for violation of decorum, at their discretion, from $5 to $25 for each offense, the same to be final.

RULE 3. Said Floor Committee shall fine any member using obscene language or epithets to or of another on the floor of the Exchange, and any parties who may engage in a personal altercation on the floors of the Exchange, the sum of Fifty (50) Dollars for each offense, with the privilege of increasing the same—said increase, however, to be subject to approval by the Board of Directors.

RULE 4. Said Committee may, in their discretion, fine any member or members from $5 to $100 for each offense for marking in any manner with chalk or otherwise on the Exchange boards, or for altering any figures thereon, or in any way whatever interfering with said boards, or for placing any document, circular or other paper on said boards, it being understood said boards are under the exclusive control of the President and Superintendent of the Exchange in their respective official capacities.

RULE 5. Five members of the Floor Committee shall constitute a quorum thereof, which quorum shall be competent to enforce above provisions.

RULE 6. All fines instituted by the Floor Committee shall be entered on the books of the Treasurer of the Exchange as a regular

charge against the party fined, and failure to pay the same within five legal days from notice thereof shall operate as a suspension from all the privileges of the Exchange of said party until payment is made.

RULE 7. The Floor Committee are especially charged with carrying out the provisions of Rule relative to trading after hours.

RULE 8. Smoking in the Exchange room in the rear of a line with the Carondelet Street side of the group of posts next to the future ring is prohibited during the hours set apart for the future business, under penalty of One Dollar ($1) for each offense.

The Floor Committee are empowered to suspend the operation of this Rule at their option, on due notice posted in the Exchange rooms.

RULE 9. All betting and offers to bet, and all matching and offers to match, to fix prices for trades are prohibited, under penalties to be enforced by the Floor Committee, as provided for in violations of decorum.

RULE 10. The provisions of these Rules of Order to apply equally to visiting members and powers of attorney.

## CALL RULES.

The following are prohibited during the progress of the calls in the future room, viz.:

1st. Standing in the arena directly in front of the caller.

2d. Moving about the room, except when coming in or going out.

3d. All trading or offering to trade in the lobby in the rear of the ring.

4th. All unnecessarily loud bidding or other violent demonstrations, and all bidding when the option is not on the floor.

5th. Any conduct calculated to produce disorder.

6th. All bids of any kind unless addressed to the caller.

on the spot; provided, however that the member shall use due diligence in keeping account of his own purchases and sales.

10th. Each member of the Floor Committee is authorized and instructed to report any violation of the foregoing regulations, and the discipline should be administered by the officer in charge.

## AMENDMENT TO RULE 8 OF THE RULES OF ORDER.

(Adopted by the Board of Directors April 11th, 1917; Posted April 11th, 1917; Effective April 11th, 1917).

Amend Rule 8 of the Rules of Order, page 162, to read as follows:

"Smoking within the railing enclosing the ring is prohibited except on the outer side of a line drawn on the Carondelet Street side of the room, during the hours set apart, for the future business, under penalty of One Dollar ($1) for each offense.

"The Floor Committee are empowered to suspend the operation of this Rule at their option, on due notice posted in the Exchange rooms."

offers to match, to fix prices for trades are prohibited, under penalties to be enforced by the Floor Committee, as provided for in violations of decorum.

RULE 10. The provisions of these Rules of Order to apply equally to visiting members and powers of attorney.

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3d. All trading or offering to trade in the lobby in the rear of the ring.

4th. All unnecessarily loud bidding or other violent demonstrations, and all bidding when the option is not on the floor.

5th. Any conduct calculated to produce disorder.

6th. All bids of any kind unless addressed to the caller.

7th. All general conversation or discussion between members.

8th. To ensure the prompt enforcement of above Rules, the Superintendent or any officer, or other party acting in his stead, is authorized and instructed, in his discretion, to fine from one to ten dollars, according to the gravity of the offense, any member deemed guilty of a violation of these regulations; provided, however, that any member may appeal from the decision of the officer to the Floor Commmittee; but pending such appeal the member shall be required to pay any fine assessed before being admitted to the privileges of the room.

9th. Any member wishing to obtain necessary and important information relative to his business then being transacted through the caller may address the Superintendent, or other officer acting in his stead, who should be required to, at once, furnish such information, if in his judgment it is important it should be furnished on the spot; provided, however, that the member shall use due diligence in keeping account of his own purchases and sales.

10th. Each member of the Floor Committee is authorized and instructed to report any violation of the foregoing regulations, and the discipline should be administered by the officer in charge.

PRESS SUPERVISION.

# PRESS SUPERVISION.

## ANNUAL ELECTION OF SUPERVISORS.

### ELECTION OF CHIEF AND ASSISTANT SUPERVISORS.

RULE 1. The Board of Directors shall elect annually during the month of December a Chief Supervisor, an Assistant Chief Supervisor, and such number of Assistants as may be deemed necessary, to be employed by the month, who shall hold their respective offices at the pleasure of the Board.

## DUTIES OF PRESIDENT, COMMITTEE ON SUPERVISION AND DELIVERIES, AND OF SUPERVISORS.

### DUTIES AND POWERS OF PRESIDENT OF EXCHANGE.

RULE 2. The President of the Exchange shall, in the interval between the regular days of meeting of the Board, be empowered to fill vavancies and to make such additional appointments as may, in his opinion, be necessary or advisable, for temporary service, at such rate of compensation as he may deem proper, but not to exceed the salary allowed to Assistant Supervisors. He shall also be empowered to suspend the Chief or any of the Assistant Supervisors, for reasons to be communicated by him to the Board of Directors at their next meeting.

### DUTIES OF COMMITTEE ON SUPERVISION AND DELIVERIES.

RULE 3. The Committee on Supervision and Deliveries shall have general charge of all matters appertaining to supervision and levee inspection not otherwise provided for in the Rules of the Exchange. They shall take cognizance of all charges against members

of the Exchange for violation of the Supervision or Levee Inspection Rules that may be reported by the Chief of those departments, and whenever, in their opinion, such charges are properly substantiated, they shall refer the same to the Committee on Membership. They shall also constitute a board of reference for such matters relating to supervision and levee inspection as the Board of Directors may deem necessary to have fully and properly digested before final action is had thereon; and to said committee shall be referred, unless otherwise ordered by the Board, all communications and suggestions from the Chief Supervisor.

DUTIES OF CHIEF SUPERVISOR AND ASSIGNMENTS OF ASSISTANTS.

RULE 4. It shall be the duty of the Chief Supervisor to visit all the presses, to overlook his assistants and exercise such supervision over matters relating to the cotton trade as may be necessary; he shall report all infractions of the rules and regulations of the Exchange to the President, and shall perform such other duties as may be required of him by these regulations or by a resolution of the Board.

Under the direction of the Committee on Supervision and Deliveries he shall make all assignments of the Assistant Supervisors for duty at the various presses, and move such assistants from place to place, whenever the Committee deem such changes necessary or desirable; such assignments and changes being always subject to the approval of the said Committee.

He shall report direct to the Chairman of the Committee on Supervision and Deliveries upon all matters connected with his department outside of his regular duties.

He shall report at each monthly meeting of the Board the quantity of loose cotton made in, and the number of bales received and delivered by each press.

The Assistant Chief Supervisor shall be a special assistant to

the Chief, and shall replace the latter in event of his absence or sickness.

DUTIES OF ASSISTANT SUPERVISORS.

RULE 5. The Assistant Supervisors shall see that all loose cotton is gathered up and shall weigh the same, making a daily report to the Chief Supervisor of the quantity weighed and stored at each press. They shall weigh all samples carried away by the factors' samplers or brokers' classers, giving a certificate in each case, if required, and keeping a record of same, showing all details. They shall see that all regulations established by this Exchange are properly enforced, and shall report all infractions of the same to the Chief Supervisor. They shall perform such other duties as may be prescribed by these regulations, or may be required of them by a resolution of the Board of Directors.

SALARIES.

RULE 6. The Chief and Assistant Supervisors shall be paid such salaries as may from time to time be fixed by the Board of Directors.

## SAMPLES AND LOOSE.

FACTORS' SAMPLES.

RULE 7. The weight of samples taken out by the factors' sampler shall not exceed six ounces per bale, and such samples shall not be removed from the press until weighed by the Assistant Supervisor, who shall keep a record of the weight of same, and if required by the factor, shall furnish a certificate of same to the sampler.

BROKERS' SAMPLES AND CUTTING BANDS FOR SAMPLES.

RULE 8. The weight of samples taken out by the brokers' classer shall not exceed six ounces per bale, and such samples shall

not be removed from the press until weighed by the Assistant Supervisor, who shall keep a record of the same, and, if required, shall furnish the classer with a certificate stating the weight. Cutting of bands on bales for the purpose of sampling is prohibited.

HOW SAMPLES MUST BE DRAWN.

RULE 9. The six ounces allowed for a sample from each bale must be drawn in one sample.

BUYERS' INSPECTORS—DISPOSITION OF LOOSE.

RULE 10. The buyers' inspector shall exhibit a certificate showing his authority to inspect the cotton. He shall replace all cotton taken from bales in boring and inspecting, and, should he fail to do so, it shall be gathered up, weighed and stored with the other loose cotton; but in no event shall it be removed from the press.

LOOSE MADE FROM SAMPLING, ETC.

RULE 11. All top samples and other loose cotton necessarily taken from the bales by the sellers' sampler or the brokers' classer, and all other loose cotton gathered up in the presses, shall be weighed and stored in the press; and the Supervisor shall report any sampler, classer or other person who may make more loose cotton than is necessary.

It shall also be the duty of the Chief or Assistant Supervisor to report to the buyer or broker any classer who takes his samples into a junk shop or other shop or store, before taking them to the office of the buyer or broker.

BALING LOOSE.

RULE 12. The Chief and Assistant Supervisors shall have sole charge of all loose cotton, of whatever description, made in the presses, to be kept by them until there is sufficient quantity to make one or more bales, when they shall have it baled up, at such place

as the owner or owners thereof may designate. After being baled up, it shall be returned to the press and stored subject to the order of the owner or owners thereof. All such cotton shall be weighed before leaving the press to be baled up, nad shall be re-weighed when returned to the press. The owner shall have the right to dispose of his loose cotton without having it baled, if he so desires; cotton to be weighed before leaving the press.

### LOOSE COTTON FOR TYPES.

RULE 13. Any buyer requiring loose cotton for the purpose of making up types shall deliver to the Supervisor an order signed by himself or by his regularly constituted attorney. He will then be allowed to take from the bales after they shall have been weighed the quantity required. The Supervisor shall weigh the cotton so taken and report the weight of same to the buyer.

## SUPERVISION FEES, ETC.

RULE 14. Each party storing cotton shall, on the first of each month, pay such amount per bale as may from time to time be fixed by the Board of Directors on all cotton received and stored by him during the preceding month, the amounts so paid to be kept by the Treasurer as a fund out of which to pay all expenses of supervision, including the cost of labor for gathering up the loose cotton.

All shipmarked, small numbered, or other cotton sampled for re-sale in this market shall, upon re-sale, pay the regular supervision fee. All forwarding cotton sampled in presses shall be subject to this Rule.

When cotton delivered in a press by planters' marks is hauled to another press and there sampled, it shall, on supervision, be subject to an additional charge of one-half of the regular supervision fee; provided, that should the owner or owners thereof turn over to

the Exchange the loose made from such cotton, no such additional charge for supervision shall be made.

Where cotton is sampled at the depots or elsewhere, not in presses, a charge of one-third of the supervision fee shall be paid by the owner or owners thereof; and the loose made shall be turned over to the latter, as is done in case of factors' cotton.

The Superintendent of the Exchange shall report to the Committee on Supervision and Deliveries on all monthly bills not paid by the 25th of each month, and shall make such other reports relating to his collections as said Committee may from time to time require of him.

RULE 15. In all cases of deliveries of cotton on Sunday, factors shall be required to pay the extra expenses for supervision and gathering loose, occasioned thereby.

When a member of the Exchange sells cotton to a non-member, the seller shall guarantee to the Exchange the supervision and levee inspection fees.

## GENERAL PROVISIONS.

### RELATING TO TRANSACTIONS BETWEEN MEMBERS AND NON-MEMBMRS.

RULE 16. It shall be the duty of the Chief Supervisor to report all infringements of Rule 13 of the Spot Rules to the Committee on Supervision and Deliveries, who shall refer such cases to the Committee on Membership.

### BENEFIT OF RULES ALLOWED TO NON-MEMBERS.

RULE 17. Sellers and buyers who are not members of the Exchange will be allowed all the benefits and protection of the regulations of this Exchange for supervision, provided they sign an agreement to be governed by them.

## RELATING TO PRESSES.

### STORAGE ROOM FOR LOOSE.

RULE 18. The presses shall furnish, free of charge, suitable storage room for all loose cotton, and shall render such aid and assistance as may be necessary to enable the Supervisors to perform the duties assigned them.

### DUTIES OF PRESS OWNERS.

RULE 19. It shall be the duty of the owners and managers of the presses to report to the President of the Exchange all such violations of these rules and regulations as shall come under their personal observation.

# LEVEE INSPECTION.

# LEVEE INSPECTION.

## ANNUAL ELECTION OF LEVEE INSPECTORS.

ELECTION AND TERM OF OFFICE FOR LEVEE INSPECTORS—SALARIES.

RULE 1. The Chief Supervisor shall perform the duties of Chief Levee Inspector, and the Board of Directors shall elect annually during the month of December such number of assistants for duty as Levee Inspectors as they may deem necessary, who shall be employed by the month, at such salaries as may from time to time be determined upon, and they shall hold their respective offices at the pleasure of the Board.

## DUTIES OF PRESIDENT AND LEVEE INSPECTORS.

DUTIES AND POWERS OF PRESIDENT OF EXCHANGE.

RULE 2. The President of the Exchange shall, in the interval between the regular days of meeting of the Board, be empowered to fill vacancies and to make such additional appointments as may in his opinion be necessary or advisable, for temporary service, at such rate of compensation as he may deem proper, but not to exceed the salary allowed to Assistant Levee Inspectors. He shall also be empowered to suspend the Chief or any of the Assistant Levee Inspectors, for reasons to be communicated by him to the Board of Directors at their next meeting.*

DUTIES OF LEVEE INSPECTORS.

RULE 3. The duties of the Chief Supervisor and Assistant Levee Inspectors shall be to protect from theft all cotton on the

* For duties of Supervisors and Committee on Supervision and Deliveries, see Rule 3 of Press Supervision.

levee and at depots, whether landed from steamers or railroads, in process of shipment or in transit through the city; to see that cotton whilst being landed or in process of shipment is properly cared for, protected from the weather and kept out of the mud, and they shall perform such other duties as are imposed upon them by these regulations, or which may be required of them by a resolution of the Board of Directors, for the more effective protection of the cotton trade of this city.

### DAILY REPORTS.

RULE 4. The Chief Supervisor and Assistant Levee Inspectors shall keep a record of the weather, also of the condition in which cotton is delivered to the various vessels; they shall also keep a record of the condition in which cotton is taken on board, specifying whether the same was taken on board in a wet or in a dry condition, and, if wet, they shall specify whether the same was received wet or became so by being exposed to rain upon the levee, or by being rolled through the mud. They shall make daily reports, embodying all particulars, which reports shall be kept on file and shall be entered up in a book to be kept for that purpose by the Superintendent of the Exchange.

### DECK LOADS AND RECEIPT ON SHIPBOARD OF COTTON IN BAD CONDITION.

RULE 5. They shall in all cases, where cotton is being taken on board in such condition as to render it liable to become damaged upon the voyage, or to damage other cotton by contact, notify the master of the vessel of the impropriety and risk of taking cotton on board in such condition. They shall also report all cotton carried on deck by any vessels leaving this port.

SKIDDING RECEIPTS BY STEAMBOATS.

RULE 6. Steamers landing cotton on the levee beyond the wooden wharves shall be required to place the same upon skids, so as to prevent its coming in contact with mud or water, and it shall be the duty of the Chief Supervisor and of his assistants to report all violations of this Rule.

CERTIFICATES OF CONDITION TO BE FORWARDED TO PORTS OF DESTINATION.

RULE 7. It shall be the duty of the Chief Supervisor, when a vessel clears at the Custom House, to draw up a certificate setting forth the condition in which her cargo was taken on board; and it shall be the duty of the Secretary of the Exchange to countersign such reports and affix thereto the seal of the Exchange. The Secretary shall forward such certificate to such person or association, at the port of destination, as the President or the Board of Directors may direct.

MASTERS REFUSING REPORTS OF RECEIPTS, ETC.

RULE 8. It shall be the duty of the Chief Supervisor to report all vessels whose masters refuse to furnish daily reports of cotton received, or who may refuse proper facilities to the Levee Inspectors for the performance of their duties; and the Secretary of the Exchange shall post upon the Exchange boards the names of all vessels so reported; he shall also note all such cases upon the reports forwarded to the ports of destination of such vessels.

INTERFERENCE WITH INSPECTORS ON DUTY.

RULE 9. Any one forcibly interfering with the Levee Inspectors while in the discharge of their duties shall be prosecuted according to law.

CHIEF SUPERVISOR'S REPORTS TO COMMITTEE ON SUPERVISION AND DELIVERIES.

RULE 10. The Chief Supervisor shall report direct to the Chairman of the Committee on Supervision and Deliveries upon all matters connected with his department, outside of his regular routine duties.*

CERTIFICATE OF COTTON UNFIT FOR SHIPMENT.

RULE 11. In any case where cotton has been taken on board of a vessel in condition unfit for shipment, any shipper by said vessel shall receive, if he so requires, a special certificate from the Exchange, setting forth the facts of the case, said certificate to be verified by oath or affirmation of the Levee Inspector in charge of said vessel. Shippers requiring special certificates shall pay all expenses incurred under this Rule.

## INSPECTION FEES AND CHARGES.

FEES ON LOCAL SHIPMENTS—DUTIES OF COLLECTOR.

RULE 12. Each shipper of cotton shall, on the first of each month, pay to the Treasurer of this Exchange such amount as may from time to time be fixed by the Board of Directors for each and every bale of cotton shipped by him during the preceding month.

In all cases where a broker is employed, such payment may be made through the broker, but where parties purchase cotton without the intervention of a broker such payment shall be made direct. The amount so paid shall be kept by the Treasurer as a fund out of which to defray all expenses incurred under the regulations for the protection of cotton upon the levee. The Superintendent of the Exchange shall report to the Committee on Supervision and De-

* For duties of Committee on Supervision and Deliveries, see Rule 3, Supervision Rules.

liveries on all monthly bills not paid by the 25th of each month, and shall make such other reports relating to his collections as said Committee may from time to time require of him.

FEES ON TRANSIT COTTON.

RULE 13. Each shipper shall report monthly the number of bales of cotton received by him and shipped without being sent to presses; all such cotton being liable to the levee inspection assessment.

## GENERAL PROVISIONS.

BENEFIT OF RULES ALLOWED TO NON-MEMBERS.

RULE 14. Sellers and buyers who are not members of the Exchange will be allowed the benefit and protection of the regulations of this Exchange for levee inspection, provided they sign an agreement to be governed by them.

# RULES RELATING TO STANDARD OF COMPRESSING

# RULES RELATING TO STANDARD OF COMPRESSING AND SIZE AND CONDITION OF BALES FOR EXPORT.

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RULE 1. Each bale shall be delivered to vessel with not less than six bands, and in proper shape. The bands shall be placed at about equal distances from each other; no band to be allowed so near the end of the bale as to be insecure.

RULE 2. The following Rule shall be strictly adhered to in measuring a bale of cotton: measurement shall be taken on the bands for width and thickness, and from both ends of the bale for length.

RULE 3. The ship agent shall not be required to accept pickery bales or bales with less than six bands.

RULE 4. Hand-tied bales shall not be rejected except for lack of required density.

RULE 5. The Inspectors of the Cotton Exchange shall be sworn to a fair and impartial performance of their duties, and all certificates issued or certified to by them shall be under such oaths as sworn Inspectors, and no member of the Cotton Exchange shall be required to accept certificates of condemnation issued by the New Orleans Steamship Association, unless such certificates are signed by the sworn Inspectors of such Association. The shippers, the ship agents, or the representatives of either, shall have free access to the records of the Inspectors of both the Cotton Exchange and the New Orleans Steamship Association.

In all cases where cotton is condemned by Inspectors of the New Orleans Steamship Association, the shipper shall have the right of being represented by an Inspector of the New Orleans Cotton Exchange at the time of condemnation.

Provided, that if the shipper does not take prompt steps to have the ship agents' certificate of condemnation verified by the Inspectors of the Cotton Exchange, such certificates shall be accepted without question.

RULE 6. All cotton re-marked in New Orleans must, in addition to the mark, bear a number on each bale.

RULE 7. Certificates of condemnation must show, when visible, shipping marks and numbers and tags carried by the bales, but no shipper shall reject certificates because of the absence of this information.

The following regulations of the New Orleans Steamship Association have been adopted by the New Orleans Cotton Exchange:

"The STANDARD size of gin boxes is to be 27x54 inches, and an extra charge of $1.00 per bale on cotton and cotton linters will be made for ocean freight on all bales from boxes of greater length or width than the above size.

"Each and every bale of cotton and cotton linters must be completely covered with bagging to protect the cotton from damage.

"No Dock receipts, Mate's receipts, Master's receipts, Agent's receipts, nor Bills of Lading will be issued without describing actual condition of the bales of cotton or linters, when received by the ocean carrier. Any bales delivered in other than apparent good order and condition will be signed for accordingly.

"The following clauses descriptive of bales of cotton or linters will be used on receipts and bills of lading when such deficiencies exist:

"1. Not thoroughly covered.
"2. Covering insufficient to retain marks.
"3. More or less wet.
"4. More or less stained.
"5. More or less soiled.

"Bales of cotton or cotton liners tendered for shipment wet and

subsequently allowed to dry out, will be claused as 'Bales have been wet and dried.'

"The STANDARD size bale, 27x54 inches, is the basis of the freight engagement with ocean carriers, and each and every bale of cotton and cotton linters from gin boxes not exceeding 27x54 inches must, on delivery to the steamer at the port, contain a minimum density of 22½ pounds to the cubic foot. Any bale of these dimensions that does not show this density, if not re-pressed to the required density at the port, shall pay extra freight to the steamer of 50 cents per bale.

"Each and every bale of cotton and cotton linters must be durably and legibly marked or branded. Marks to be placed between bands so that no part of the mark will be covered by the band. No other mark allowed upon the bale, except head brand (if any), and the mark under which the bale is moving for export. All other marks to be thoroughly obliterated so that no part of any old mark will appear. Upon round bales the gin mark will be allowed to remain.

"When the quality of the bagging is insufficient to carry the marks to destination, a patch of good bagging or cloth should be put on the bale, under the bands, to bear the mark."

**FORM OF AUTHORIZATION TO VISIT EXCHANGE.**

**Under Article XVI of the By-Laws.**

.....191.....

M.....

Superintendent New Orleans Cotton Exchange,

Sir—

You are hereby notified that....., my bona fide clerk, is authorized to visit the Cotton Exchange during my absence from the city (or sickness) for the sole purpose of obtaining news or information. Respectfully,

.....

**GENERAL POWER OF ATTORNEY.**

**New Orleans Cotton Exchange.**

**Under Article XVI of the By-Laws.**

**United States of America,**
**State of Louisiana, Parish of Orleans,**
**City of New Orleans.**

.....191.....

Know All Men by These Presents:

That.....of.....do hereby constitute and appoint, and by these presents do make, constitute and appoint....., of.....true and lawful attorney to represent..... in the transaction of all business in the New Orleans Cotton Exchange for.....and in.....stead, to perform all necessary acts as hereinbefore stated, in accordance with the By-Laws and Rules of the Exchange, which.....might legally do; hereby ratifying and confirming in all respects the act or acts of.....said attorney as fully as..... could do if personally present, and this.....power shall remain in full force and effect until after expiration of twenty-four hours from the date of the posting upon the bulletin board of the Exchange Room, by the Superintendent thereof, a notice of the revocation of same.

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Witness:

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# APPENDIX

# COTTON FUTURES ACT

## EXTRACT

FROM

PUBLIC 190, SIXTY-FOURTH CONGRESS
AGRICULTURAL APPROPRIATION ACT
APPROVED AUGUST 11, 1916

PART A

WASHINGTON
GOVERNMENT PRINTING OFFICE
1916

## PART A.

That this Part, to be known as the United States cotton futures Act, be, and hereby is, enacted to read and be effective hereafter as follows:

"That this Act shall be known by the short title of the 'United States cotton futures Act.'

"SEC. 2. That, for the purposes of this Act, the term 'contract of sale' shall be held to include sales, agreements of sale, and agreements to sell. That the word 'person,' wherever used in this Act, shall be construed to import the plural or singular, as the case demands, and shall include individuals, associations, partnerships, and corporations. When construing and enforcing the provisions of this Act, the act, omission, or failure of any official, agent, or other person acting for or employed by any association, partnership, or corporation within the scope of his employment or office, shall, in every case, also be deemed the act, omission, or failure of such association, partnership, or corporation as well as that of the person.

"SEC. 3. That upon each contract of sale of any cotton for future delivery made at, on, or in any exchange, board of trade, or similar institution or place of business, there is hereby levied a tax in the nature of an excise of 2 cents for each pound of the cotton involved in any such contract.

"SEC. 4. That each contract of sale of cotton for future delivery mentioned in section three of this Act shall be in writing plainly stating, or evidenced by written memorandum showing, the terms of such contract, including the quantity of the cotton involved and the names and addresses of the seller and buyer in such contract, and shall be signed by the party to be charged, or by his agent in his behalf. If the contract or memorandum specify in bales the quantity of the cotton involved, without giving the weight, each bale shall, for the purposes of this Act, be deemed to weigh five hundred pounds.

"SEC. 5. That no tax shall be levied under this Act on any contract of sale mentioned in section three hereof if the contract comply with each of the following conditions:

"First. Conform to the requirements of section four of, and the rules and regulations made pursuant to, this Act.

"Second. Specify the basis grade for the cotton involved in the contract, which shall be one of the grades for which standards are established by the Secretary of Agriculture, except grades prohibited from being delivered on a contract made under this section by the fifth subdivision of this section, the price per pound at which the cotton of such basis grade is contracted to be bought or sold, the date when the purchase or sale was made, and the month or months in which the contract is to be fulfilled or settled: *Provided*, That middling shall be deemed the basis grade incorporated into the contract if no other basis grade be specified either in the contract or in the memorandum evidencing the same.

"Third. Provide that the cotton dealt with therein or delivered thereunder shall be of or within the grades for which standards are

established by the Secretary of Agriculture except grades prohibited from being delivered on a contract made under this section by the fifth subdivision of this section and no other grade or grades.

"Fourth. Provide that in case cotton of grade other than the basis grade be tendered or delivered in settlement of such contract, the differences above or below the contract price which the receiver shall pay for such grades other than the basis grade shall be the actual commercial differences, determined as hereinafter provided.

"Fifth. Provide that cotton that, because of the presence of extraneous matter of any character or irregularities or defects, is reduced in value below that of Good Ordinary, or cotton that is below the grade of Good Ordinary, or, if tinged, cotton that is below the grade of Low Middling, or, if stained, cotton that is below the grade of Middling, the grades mentioned being of the official cotton standards of the United States, or cotton that is less than seven-eighths of an inch in length of staple, or cotton of perished staple or of immature staple, or cotton that is 'gin cut' or reginned, or cotton that is 'repacked' or 'false packed' or 'mixed packed' or 'water packed,' shall not be delivered on, under, or in settlement of such contract.

"Sixth. Provide that all tenders of cotton under such contract shall be the full number of bales involved therein, except that such variations of the number of bales may be permitted as is necessary to bring the total weight of the cotton tendered within the provisions of the contract as to weight; that, on the fifth business day prior to delivery, the person making the tender shall give to the person receiving the same written notice of the date of delivery, and that, on or prior to the date so fixed for delivery, and in advance of final settlement of the contract, the person making the tender shall furnish to the person receiving the same a written notice or certificate stating the grade of each individual bale to be delivered and, by means of marks or numbers, identifying each bale with its grade.

"Seventh. Provide that, in case a dispute arises between the person making the tender and the person receiving the same, as to the classification of any cotton tendered under the contract, either party may refer the question of the true classification of said cotton to the Secretary of Agriculture for determination, and that such dispute shall be referred and determined, and the costs thereof fixed, assessed, collected, and paid in such manner and in accordance with such rules and regulations as may be prescribed by the Secretary of Agriculture.

"The provisions of the third, fourth, fifth, sixth, and seventh subdivisions of this section shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the memorandum evidencing the same, at or prior to the time the same is signed, the phrase 'Subject to United States cotton futures Act, section five.'

"The Secretary of Agriculture is authorized to prescribe rules and regulations for carrying out the purposes of the seventh subdivision of this section, and his findings, upon any dispute referred to him under said seventh subdivision, made after the parties in interest have had an opportunity to be heard by him or such officer, officers, agent, or agents of the Department of Agriculture as he may designate, shall be accepted in the courts of the United States in all suits between such parties, or their privies, as prima facie evidence of the true classification of the cotton involved.

"SEC. 6. That for the purposes of section five of this Act the differences above or below the contract price which the receiver shall pay for cotton of grades above or below the basis grade in the settlement of a contract of sale for the future delivery of cotton shall be determined by the actual commercial differences in value thereof upon the sixth business day prior to the day fixed, in accordance with the sixth subdivision of section five, for the delivery of cotton on the contract, established by the sale of spot cotton in the market where the future transaction involved occurs and is consummated if such market be a bona fide spot market; and in the event there be no bona fide spot market at or in the place in which such future transaction occurs, then, and in that case, the said differences above or below the contract price which the receiver shall pay for cotton above or below the basis grade shall be determined by the average actual commercial differences in value thereof, upon the sixth business day prior to the day fixed, in accordance with the sixth subdivision of section five, for the delivery of cotton on the contract, in the spot markets of not less than five places designated for the purpose from time to time by the Secretary of Agriculture, as such values were established by the sales of spot cotton, in such designated five or more markets: *Provided*, That for the purposes of this section such values in the said spot markets be based upon the standards for grades of cotton established by the Secretary of Agriculture: *And provided further*, That whenever the value of one grade is to be determined from the sale or sales of spot cotton of another grade or grades, such value shall be fixed in accordance with rules and regulations which shall be prescribed for the purpose by the Secretary of Agriculture.

"SEC. 6A. That no tax shall be levied under this Act on any contract of sale mentioned in section three hereof if the contract provide that, in case cotton of grade or grades other than the basis grade specified in the contract shall be tendered in performance of the contract, the parties to such contract may agree, at the time of the tender, as to the price of the grade or grades so tendered, and that if they shall not then agree as to such price, then, and in that event, the buyer of said contract shall have the right to demand the specific fulfillment of such contract by the actual delivery of cotton of the basis grade named therein and at the price specified for such basis grade in said contract, and if the contract also comply with all the terms and conditions of section five hereof not inconsistent with this section: *Provided*, That nothing in this section shall be so construed as to relieve from the tax levied by section three of this Act any contract in which, or in the settlement of or in respect to which, any device or arrangement whatever is resorted to, or any agreement is made, for the determination or adjustment of the price of the grade or grades tendered other than the basis grade specified in the contract by any 'fixed difference' system, or by arbitration, or by any other method not provided for by this Act.

Contracts made in compliance with this section shall be known as 'Section six A Contracts.' The provisions of this section shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the memorandum evidencing the same, at or prior to the time the same is signed, the phrase 'Subject to United States cotton futures Act, section six A.'

Section ten of this Act shall not be construed to apply to any contract of sale made in compliance with section six A hereof.

"SEC. 7. That for the purposes of this Act the only markets which shall be considered bona fide spot markets shall be those which the Secretary of Agriculture shall, from time to time, after investigation, determine and designate to be such, and of which he shall give public notice.

"SEC. 8. That in determining, pursuant to the provisions of this Act, what markets are bona fide spot markets, the Secretary of Agriculture is directed to consider only markets in which spot cotton is sold in such volume and under such conditions as customarily to reflect accurately the value of middling cotton and the differences between the prices or values of middling cotton and of other grades of cotton for which standards shall have been established by the Secretary of Agriculture: *Provided*, That if there be not sufficient places, in the markets of which are made bona fide sales of spot cotton of grades for which standards are established by the Secretary of Agriculture, to enable him to designate at least five spot markets in accordance with section six of this Act, he shall, from data as to spot sales collected by him, make rules and regulations for determining the actual commercial differences in the value of spot cotton of the grades established by him as reflected by bona fide sales of spot cotton, of the same or different grades, in the markets selected and designated by him, from time to time, for that purpose, and in that event, differences in value of cotton of various grades involved in contracts made pursuant to section five of this Act shall be determined in compliance with such rules and regulations.

"SEC. 9. That the Secretary of Agriculture is authorized, from time to time, to establish and promulgate standards of cotton by which its quality or value may be judged or determined, including its grade, length of staple, strength of staple, color, and such other qualities, properties, and conditions as may be standardized in practical form, which, for the purposes of this Act, shall be known as the 'Official cotton standards of the United States,' and to adopt, change, or replace the standard for any grade of cotton established under the Act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and nine (Thirty-fifth Statutes at Large, page two hundred and fifty-one), and Acts supplementary thereto: *Provided*, That any standard of any cotton established and promulgated under this Act by the Secretary of Agriculture shall not be changed or replaced within a period less than one year from and after the date of the promulgation thereof by the Secretary of Agriculture: *Provided further*, That, subsequent to six months after the date section three of this Act becomes effective, no change or replacement of any standard of any cotton established and promulgated under this Act by the Secretary of Agriculture shall become effective until after one year's public notice thereof, which notice shall specify the date when the same is to become effective. The Secretary of Agriculture is authorized and directed to prepare practical forms of the official cotton standards which shall be established by him, and to furnish such practical forms from time to time, upon request, to any person, the cost thereof, as determined by the Secretary of Agriculture, to be paid by the person requesting the same, and to certify such practical forms under

the seal of the Department of Agriculture and under the signature of the said Secretary, thereto affixed by himself or by some official or employee of the Department of Agriculture thereunto duly authorized by the said Secretary.

"SEC. 10. That no tax shall be levied under this Act on any contract of sale mentioned in section three hereof, if the contract comply with each of the following conditions:

"First. Conform to the rules and regulations made pursuant to this Act.

"Second. Specify the grade, type, sample, or description of the cotton involved in the contract, the price per pound at which such cotton is contracted to be bought or sold, the date of the purchase or sale, and the time when shipment or delivery of such cotton is to be made.

"Third. Provide that cotton of or within the grade or of the type, or according to the sample or description, specified in the contract shall be delivered thereunder, and that no cotton which does not conform to the type, sample, or description, or which is not of or within the grade specified in the contract shall be tendered or delivered thereunder.

"Fourth. Provide that the delivery of cotton under the contract shall not be effected by means of 'set-off' or 'ring' settlement, but only by the actual transfer of the specified cotton mentioned in the contract.

"The provisions of the first, third, and fourth subdivisions of this section shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the document or memorandum evidencing the same, at or prior to the time the same is entered into, the words 'Subject to United States cotton futures Act, section ten.'

"This Act shall not be construed to impose a tax on any sale of spot cotton.

"This section shall not be construed to apply to any contract of sale made in compliance with section five of this Act.

"SEC. 11. That the tax imposed by section three of this Act shall be paid by the seller of the cotton involved in the contract of sale, by means of stamps which shall be affixed to such contracts, or to the memoranda evidencing the same, and canceled in compliance with rules and regulations which shall be prescribed by the Secretary of the Treasury.

"SEC. 12. That no contract of sale of cotton for future delivery mentioned in section three of this Act which does not conform to the requirements of section four hereof and has not the necessary stamps affixed thereto as required by section eleven hereof shall be enforceable in any court of the United States by, or on behalf of, any party to such contract or his privies.

"SEC. 13. That the Secretary of the Treasury is authorized to make and promulgate such rules and regulations as he may deem necessary to collect the tax imposed by this Act and otherwise to enforce its provisions. Further to effect this purpose, he shall require all persons coming within its provisions to keep such records and statements of account, and may require such persons to make such returns verified under oath or otherwise, as will fully and correctly disclose all transactions mentioned in section three of this Act, including the

making, execution, settlement, and fulfillment thereof; he may require all persons who act in the capacity of a clearing house, clearing association, or similar institution for the purpose of clearing, settling, or adjusting transactions mentioned in section three of this Act to keep such records and to make such returns as will fully and correctly disclose all facts in their possession relating to such transactions; and he may appoint agents to conduct the inspection necessary to collect said tax and otherwise to enforce this Act and all rules and regulations made by him in pursuance hereof, and may fix the compensation of such agents. The provisions of the internal-revenue laws of the United States, so far as applicable, including sections thirty-one hundred and seventy-three, thirty-one hundred and seventy-four, and thirty-one hundred and seventy-five of the Revised Statutes, as amended, are hereby extended, and made to apply, to this Act.

"SEC. 14. That any person liable to the payment of any tax imposed by this Act who fails to pay, or evades or attempts to evade the payment of such tax, and any person who otherwise violates any provision of this Act, or any rule or regulation made in pursuance hereof, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $100 nor more than $20,000, in the discretion of the court; and, in case of natural persons, may, in addition, be punished by imprisonment for not less than sixty days nor more than three years, in the discretion of the court.

"SEC. 15. That in addition to the foregoing punishment there is hereby imposed, on account of each violation of this Act, a penalty of $2,000, to be recovered in an action founded on this Act in the name of the United States as plaintiff, and when so recovered one-half of said amount shall be paid over to the person giving the information upon which such recovery was based. It shall be the duty of United States attorneys, to whom satisfactory evidence of violations of this Act is furnished, to institute and prosecute actions for the recovery of the penalties prescribed by this section.

"SEC. 16. That no person whose evidence is deemed material by the officer prosecuting on behalf of the United States in any case brought under any provision of this Act shall withhold his testimony because of complicity by him in any violation of this Act or of any regulation made pursuant to this Act, but any such person called by such officer who testifies in such case shall be exempt from prosecution for any offense to which his testimony relates.

"SEC. 17. That the payment of any tax levied by this Act shall not exempt any person from any penalty or punishment now or hereafter provided by the laws of any State for entering into contracts of sale of cotton for future delivery, nor shall the payment of any tax imposed by this Act be held to prohibit any State or municipality from imposing a tax on the same transaction.

"SEC. 18. That there is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, for the fiscal year ending June thirtieth, nineteen hundred and sixteen, the unexpended balance of the sum appropriated by the Act of March fourth, nineteen hundred and fifteen (Thirty-eighth Statutes at Large, page one thousand and seventeen), for 'collecting the cotton futures tax,' or so much thereof as may be necessary, to enable the Secretary of the Treasury to carry out the provisions of this Act and any duties remaining to be

performed by him under the United States cotton futures Act of August eighteenth, nineteen hundred and fourteen (Thirty-eight Statutes at Large, page six hundred and ninety-three).

"SEC. 19. That there are hereby appropriated out of any moneys in the Treasury not otherwise appropriated, available until expended, the unexpended balance of the sum of $150,000 appropriated by section twenty of the said Act of August eighteenth, nineteen hundred and fourteen, and for the fiscal year ending June thirtieth, nineteen hundred and sixteen, the unexpended balance of the sum of $75,000 appropriated for the 'Enforcement of the United States cotton futures Act' by the Act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and sixteen (Thirty-eighth Statutes at Large, page one thousand and eighty-six), or so much of each of said unexpended balances as may be necessary, to be used by the Secretary of Agriculture for the same purposes, in carrying out the provisions of this Act, as those for which said sums, respectively, were originally appropriated, and to enable the Secretary of Agriculture to carry out any duties remaining to be performed by him under the said Act of August eighteenth, nineteen hundred and fourteen. The Secretary of Agriculture is hereby directed to publish from time to time the results of investigations made in pursuance of this Act. All sums collected by the Secretary of Agriculture as costs under section five, or for furnishing practical forms under section nine, of this Act, shall be deposited and covered into the Treasury as miscellaneous receipts.

"SEC. 20. That sections nine, eighteen, and nineteen of this Act and all provisions of this Act authorizing rules and regulations to be prescribed shall be effective immediately. All other sections of this Act shall become and be effective on and after the first day of the calendar month next succeeding the date of the passage of this Act: *Provided*, That nothing in this Act shall be construed to apply to any contract of sale of any cotton for future delivery mentioned in section three of this Act which shall have been made prior to the first day of the calendar month next succeeding the date of the passage of this Act.

"SEC. 21. That the Act entitled 'An Act to tax the privilege of dealing on exchanges, boards of trade, and similar places in contracts of sale of cotton for future delivery, and for other purposes,' approved August eighteenth, nineteen hundred and fourteen (Thirty-eighth Statutes at Large, page six hundred and ninety-three), is hereby repealed, effective on and after the first day of the calendar month next succeeding the date of the passage of this act: *Provided*, That nothing in this Act shall be construed to affect any right or privilege accrued, any penalty or liability incurred, or any proceeding commenced under said Act of August eighteenth, nineteen hundred and fourteen, or to diminish any authority conferred by said Act on any official of the United States necessary to enable him to carry out any duties remaining to be performed by him under the said Act, or to impair the effect of the findings of the Secretary of Agriculture upon any dispute referred to him under said Act, or to affect any right in respect to, or arising out of, any contract mentioned in section three of said Act, made on or subsequent to February eighteenth, nineteen hundred and fifteen, and prior to the first day of the calendar month next succeeding the date of the passage of

this Act, but so far as concerns any such contract said Act of August eighteenth, nineteen hundred and fourteen, shall remain in force with the same effect as if this Act had not been passed.

"SEC. 22. That if any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered."

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# APPENDIX

## UNITED STATES COTTON FUTURES ACT.

[PUBLIC—No. 174—63D CONGRESS.]

[S. 110.]

**An Act To tax the privilege of dealing on exchanges, boards of trade, and similar places in contracts of sale of cotton for future delivery, and for other purposes.**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act shall be known by the short title of the "United States Cotton Futures Act."

SEC. 2. That, for the purposes of this Act, the term "contract of sale" shall be held to include sales, agreements of sale, and agreements to sell. That the word "person," wherever used in this Act, shall be construed to import the plural or singular, as the case demands, and shall include individuals, associations, partnerships, and corporations. When construing and enforcing the provisions of this Act, the act, omission, or failure of any official, agent, or other person acting for or employed by any association, partnership, or corporation within the scope of his employment or office, shall, in every case, also be deemed the act, omission, or failure of such association, partnership, or corporation as well as that of the person.

SEC. 3. That upon each contract of sale of any cotton for future delivery made at, on, or in any exchange, board of trade, or similar institution or place of business, there is hereby levied a tax in the nature of an excise of 2 cents for each pound of the cotton involved in any such contract.

SEC. 4. That each contract of sale of cotton for future delivery mentioned in Section Three of this Act shall be in writing plainly stating, or evidenced by written memorandum showing, the terms of

such contract, including the quantity of the cotton involved and the names and addresses of the seller and buyer in such contract, and shall be signed by the party to be charged, or by his agent in his behalf. If the contract or memorandum specify in bales the quantity of the cotton involved, without giving the weight, each bale shall, for the purposes of this Act, be deemed to weigh five hundred pounds.

SEC. 5. That no tax shall be levied under this Act on any contract of sale mentioned in Section Three hereof, if the contract comply with each of the following conditions:

First. Conform to the requirements of Section Four of, and the rules and regulations made pursuant to, this Act.

Second. Specify the basis grade for the cotton involved in the contract, which shall be one of the grades for which standards are established by the Secretary of Agreiulture except grades prohibited from being delivered on a contract made under this section by the fifth subdivision of this section, the price per pound at which the cotton of such basis grade is contracted to be bought or sold, the date when the purchase or sale was made, and the month or months in which the contract is to be fulfilled or settled: *Provided,* That middling shall be deemed the basis grade incorporated into the contract if no other basis grade be specified either in the contract or in the memorandum evidencing the same.

Third. Provide that the cotton dealt with therein or delivered thereunder shall be of or within the grades for which standards are established by the Secretary of Agriculture except grades prohibited from being delivered on a contract made under this section by the fifth subdivision of this section and no other grade or grades.

Fourth. Provide that in case cotton of grade other than the basis grade be tendered or delivered in settlement of such contract, the differences above or below the contract price which the receiver shall pay for such grades other than the basis grade shall be the actual commercial differences, determined as hereinafter provided.

Fifth. Provide that cotton that, because of the presence of extraneous matter of any character or irregularities or defects, is reduced in value below that of Good Ordinary, or cotton that is below the grade of Good Ordinary, or, if tinged, cotton that is below the grade of Low Middling, or, if stained, cotton that is below the grade of Middling, the grades mentioned being of the official cotton standards of the United States, or cotton that is less than seven-eighths of an inch in length of staple, or cotton of perished staple or of immature staple, or cotton that is "gin cut" or reginned, or cotton that is "repacked" or "false packed" or "mixed packed" or "water packed," shall not be delivered on, under, or in settlement of such contract.

Sixth. Provide that all tenders of cotton under such contract shall be the full number of bales involved therein, except that such variations of the number of bales may be permitted as is necessary to bring the total weight of the cotton tendered within the provisions of the contract as to weight; that, on the fifth business day prior to delivery, the person making the tender shall give to the person receiving the same written notice of the date of delivery, and that, on or prior to the date so fixed for delivery, and in advance of final settlement of the contract, the person making the tender shall furnish to the person receiving the same a written notice or certificate stating the grade of each individual bale to be delivered and, by means of marks or numbers, identifying each bale with its grade.

Seventh. Provide that, in case a dispute arises between the person making the tender and the person receiving the same, as to the quality, or the grade, or the length of staple, of any cotton tendered under the contract, either party may refer the question to the Secretary of Agriculture for determination, and that such dispute shall be referred and determined, and the costs thereof, fixed, assessed, collected and paid, in such manner and in accordance with such rules and regulations as may be prescribed by the Secretary of Agriculture.

The provisions of the third, fourth, fifth, sixth, and seventh sub-

divisions of this section shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the memorandum evidencing the same, at or prior to the time the same is signed, the phrase, "Subject to United States Cotton Futures Act, Section Five."

The Secretary of Agriculture is authorized to prescribe rules and regulations for carrying out the purposes of the seventh subdivision of this section, and his findings, upon any dispute referred to him under said seventh subdivision, made after the parties in interest have had an opportunity to be heard by him or such officer, officers, agent, or agents of the Department of Agriculture as he may designate, shall be accepted in the courts of the United States in all suits between such parties, or their privies, as prima facie evidence of the true quality, or grade, or length of staple, of the cotton involved.

SEC. 6. That for the purposes of Section Five of this Act the differences above or below the contract price which the receiver shall pay for cotton of grades above or below the basis grade in the settlement of a contract of sale for the future delivery of cotton shall be determined by the actual commercial differences in value thereof upon the sixth business day prior to the day fixed, in accordance with the sixth subdivision of Section Five, for the delivery of cotton on the contract, established by the sale of spot cotton in the market where the future transaction involved occurs and is consummated if such market be a bona fide spot market; and in the event there be no bona fide spot market at or in the place in which such future transaction occurs, then, and in that case, the said differences above or below the contract price which the receiver shall pay for cotton above or below the basis grade shall be determined by the average actual commercial differences in value thereof, upon the sixth business day prior to the day fixed, in accordance with the sixth subdivision of Section Five, for the delivery of cotton on the contract, in the spot markets of not less than five places designated for the purpose from time to time by the Secretary of Agriculture, as such

values were established by the sales of spot cotton, in such designated five or more markets: *Provided,* That for the purposes of this section such values in the said spot markets be based upon the standards for grades of cotton established by the Secretary of Agriculture: *And provided further,* That whenever the value of one grade is to be determined from the sale or sales of spot cotton of another grade or grades, such value shall be fixed in accordance with rules and regulations which shall be prescribed for the purpose by the Secretary of Agriculture.

SEC. 7. That for the purposes of this Act the only markets which shall be considered bona fide markets shall be those which the Secretary of Agriculture shall, from time to time, after investigation, determine and designate to be such, and of which he shall give public notice.

SEC. 8. That in determining, pursuant to the provisions of this Act, what markets are bona fide spot markets, the Secretary of Agriculture is directed to consider only markets in which spot cotton is sold in such volume and under such conditions as customarily to reflect accurately the value of middling cotton and the differences between the prices or values of middling cotton and of other grades of cotton for which standards shall have been established by the Secretary of Agriculture: *Provided,* That if there be not sufficient places, in the markets of which are made bona fide sales of spot cotton of grades for which standards are established by the Secretary of Agriculture, to enable him to designate at least five spot markets in accordance with Section Six of this Act, he shall, from data as to spot sales collected by him, make rules and regulations for determining the actual commercial differences in the value of spot cotton of the grades established by him as reflected by bona fide sales of spot cotton, of the same or different grades, in the markets selected and designated by him, from time to time, for that purpose, and in that event, differences in value of cotton for various grades involved in contracts made pursuant to Section Five of this Act

shall be determined in compliance with such rules and regulations.

SEC. 9. That the Secretary of Agriculture is authorized, from time to time, to establish and promulgate standards of cotton by which its quality or value may be judged or determined, including its grade, length of staple, strength of staple, color, and such other qualities, properties, and conditions as may be standardized in practical form, which, for the purposes of this Act, shall be known as the "Official cotton standards of the United States," and to adopt, change, or replace the standard for any grade of cotton established under the Act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and nine (Thirty-fifth Statutes at Large, page two hundred and fifty-one), and Acts supplementary thereto: *Provided,* That any standard of any cotton established and promulgated under this Act by the Secretary of Agriculture shall not be changed or replaced within a period less than one year from and after the date of the promulgation thereof by the Secretary of Agriculture: ***Provided further,*** That, subsequent to six months after the date Section Three of this Act becomes effective, no change or replacement of any standard of any cotton established and promulgated under this Act by the Secretary of Agriculture shall become effective until after one year's public notice thereof, which notice shall specify the date when the same is to become effective. The Secretary of Agrciulture is authorized and directed to prepare practical forms of the official cotton standards which shall be established by him, and to furnish such practical forms from time to time, upon request, to any person, the cost thereof, as determined by the Secretary of Agriculture, to be paid by the person requesting the same, and to certify such practical forms under the seal of the Department of Agriculture and under the signature of the said Secretary, thereto affixed by himself or by some official or employee of the Department of Agriculture thereunto duly authorized by the said Secretary.

SEC. 10. That no tax shall be levied under this Act on any con-

tract of sale mentioned in Section Three hereof, if the contract comply with each of the following conditions:

First. Conform to the rules and regulations made pursurnt to this Act.

Second. Specify the grade, type, sample, or description of the cotton involved in the contract, the price per pound at which such cotton is contracted to be bought or sold, the date of the purchase or sale, and the time when shipment or delivery of such cotton is to be made.

Third. Provide that cotton of or within the grade or of the type, or according to the sample or description, specified in the contract shall be delivered thereunder, and that no cotton which does not conform to the type, sample, or description, or which is not of or within the grade, specified in the contract shall be tendered or delivered thereunder.

Fourth. Provide that the delivery of cotton under the contract shall not be effected by means of "set-off" or "ring" settlement, but only by the actual transfer of the specified cotton mentioned in the contract.

The provisions of the first, third, and fourth subdivisions of this section shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the document or memorandum, evidencing the same, at or prior to the time the same is entered into, the words "Subject to United States Cotton Futures Act, Section Ten."

This Act shall not be construed to impose a tax on any sale of spot cotton.

This section shall not be construed to apply to any contract of sale made in compliance with Section Five of this Act.

SEC. 11. That upon each order transmitted, or directed or authorized to be transmitted, by any person within the United States for the making of any contract of sale of cotton grown in the United States for future delivery in cases in which the contract of

sale is or is to be made at, on, or in any exchange, board of trade, or similar institution or place of business in any foreign country, there is hereby levied an excise tax at the rate of 2 cents for each pound of the cotton so ordered to be bought or sold under such contract: *Provided*, That no tax shall be levied under this Act on any such order if the contract made in pursuance thereof comply either with the conditions specified in the first, second, third, fourth, fifth, and sixth subdivisions of Section Five, or with all the conditions specified in Section Ten of this Act, except that the quantity of the cotton involved in the contract may be expressed therein in terms of kilograms instead of pounds.

SEC. 12. That the tax imposed by Section Three of this Act shall be paid by the seller of the cotton involved in the contract of sale, by means of stamps which shall be affixed to such contracts, or to the memoranda evidencing the same, and canceled in compliance with rules and regulations which shall be prescribed by the Secretary of the Treasury. The tax imposed by Section Eleven of this Act shall be paid by the sender of the order and collected in accordance with rules and regulations which shall be prescribed by the Secretary of the Treasury.

SEC. 13. That no contract of sale of cotton for future delivery mentioned in Section Three of this Act which does not conform to the requirements of Section Four hereof and has not the necessary stamps affixed thereto as required by Section Twelve hereof shall be enforceable in any court of the United States by, or on behalf of, any party to such contract or his privies. That no contract of sale of cotton for future delivery, made in pursuance of any order mentioned in Section Eleven of this Act, shall be enforceable in any court of the United States by or on behalf of any party to such contract or his privies unless it conforms to the requirements of Section Four hereof and the tax imposed by Section Eleven upon the order for such contract shall have been paid in compliance with Section Twelve of this Act.

SEC. 14. That the Secretary of the Treasury is authorized to make and promulgate such rules and regulations as he may deem necessary to collect the tax imposed by this Act and otherwise to enforce its provisions. Further to effect this purpose, he shall require all persons coming within its provisions to keep such records and statements of account as will fully and correctly disclose all transactions mentioned in Sections Three and Eleven of this Act; and he may appoint agents to conduct the inspection necessary to collect said tax and otherwise to enforce this Act and all rules and regulations made by him in pursuance hereof, and may fix the compensation of such agents.

SEC. 15. That any person liable to the payment of any tax imposed by this Act who fails to pay, or evades or attempts to evade the payment of such tax, and any person who otherwise violates any provision of this Act, or any rule or regulation made in pursuance hereof, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $100 nor more than $20,000, in the discretion of the court; and, in case of natural persons, may, in addition, be punished by imprisonment for not less than sixty days nor more than three years, in the discretion of the court.

SEC. 16. That in addition to the foregoing punishment there is hereby imposed, on account of each violation of this Act, a penalty of $2,000, to be recovered in an action founded on this Act in the name of the United States as plaintiff, and when so recovered one-half of said amount shall be paid over to the person giving the information upon which such recovery was based. It shall be the duty of United States attorneys, to whom satisfactory evidence of violations of this Act is furnished, to institute and prosecute actions for the recovery of the penalties prescribed by this section.

SEC. 17. That no person whose evidence is deemed material by the officer prosecuting on behalf of the United States in any case brought under any provision of this Act shall withhold his testimony because of complicity by him in any violation of this Act or of any

regulation made pursuant to this Act, but any such person called by such officer who testifies in such case shall be exempt from prosecution for any offense to which his testimony relates.

SEC. 18. That the payment of any tax levied by this Act shall not exempt any person from any penalty or punishment now or hereafter provided by the laws of any State for entering into contracts of sale of cotton for future delivery, nor shall the payment of any tax imposed by this Act be held to prohibit any State or municipality from imposing a tax on the same transaction.

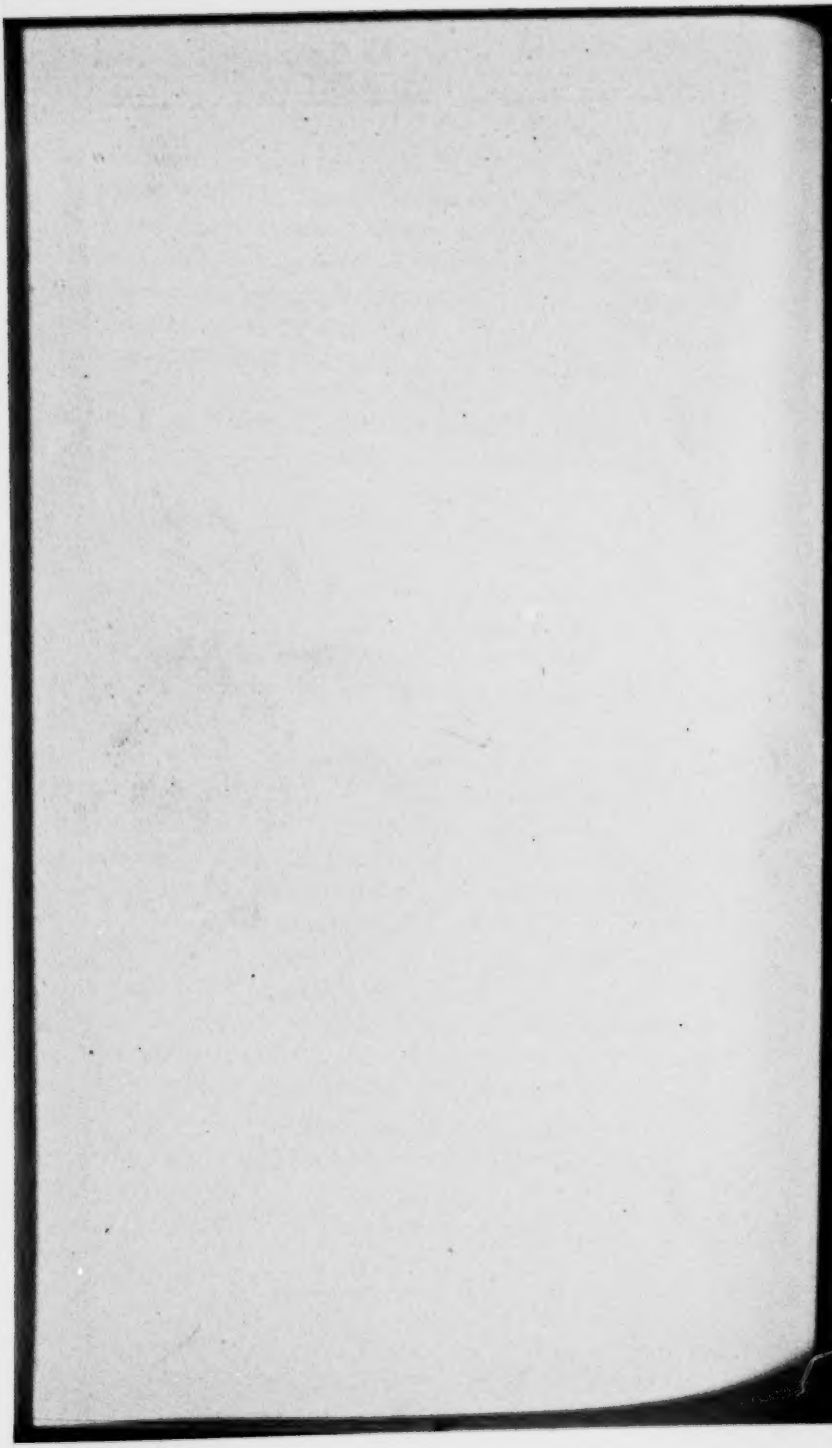
SEC. 19. That there is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, for the fiscal year ending June thirtieth, nineteen hundred and fifteen, the sum of $50,000 or so much thereof as may be necessary to enable the Secretary of the Treasury to carry out the provisions of this Act.

SEC. 20. That there is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, available until expended, the sum of $150,000 or so much thereof as may be necessary to enable the Secretary of Agriculture to make such investigations, to collect such data, and to use such methods and means as he may deem necessary to determine and designate what are bona fide spot markets within the meaning of this Act, to prescribe rules and regulations pursuant to Sections Five, Six, and Eight hereof, to establish and promulgate standards for cotton and to furnish practical forms thereof as authorized by Section Nine hereof, to publish the results of his investigations, to pay rent and to employ such persons as he may deem necessary, in the City of Washington and elsewhere. The Secretary of Agriculture is hereby directed to publish from time to time the results of investigations made in pursuance of this Act. All sums collected by the Secretary of Agriculture as costs under Section Five, or for furnishing practical forms under Section Nine of this Act, shall be deposited and covered into the Treasury as miscellaneous receipts.

SEC. 21. That Sections Nine, Nineteen, and Twenty of this Act

and all provisions of this Act authorizing rules and regulations to be prescribed shall be effective immediately. All other sections of this Act shall become and be effective on and after six months from the date of the passage of this Act: *Provided,* That nothing in this Act shall be construed to apply to any contract of sale of any cotton for future delivery mentioned in Section Three of this Act which shall have been made prior to the date when Section Three becomes effective.

Approved August 18, 1914.



141 Mr. Cravens: We will want before we close to read certain of the rules that we think are applicable.

The Court: All right.

Mr. McDonough: That is satisfactory, as far as I am concerned.

By Mr. Johnson:

Q. I notice, Colonel, that you have a certificate that this is a true copy. Is that your signature on the first page?

A. It is.

Q. And that is the seal of the New Orleans Cotton Exchange?

A. That is the seal of the Exchange, yes, sir.

Cross-Examination

Read by Mr. McDonough:

Mr. Andrews:

Q. Colonel, can you give me information as to about the number of bales of May spot cotton that has been the average, in delivery, in the New Orleans cotton market, say, for the last five years?

A. The average number of bales that have been delivered on contract?

Q. May contracts, yes?

A. Well, we will have to look back over our records. There is no specific separation made of the number of bales delivered on any special month. The deliveries on contracts are made from time [ti] [tome] throughout the season, and as those deliveries are made, the reports are given to the Exchange of so many bales delivered on contract. It don't say so many bales for May, or June, or July account, no more than that in the spot business there were so many bales of middling, good middling, or low ordinary.

Q. Can you, then, give me from your recollection, without troubling you to go over your records, about the number of bales of cotton that are delivered every year on contract through the Cotton Exchange, taking the last four or five years as a basis?

A. The last how many years?

Q. The last four or five years, as an annual average, is what I am trying to get at? Approximately correct?

A. Well, roughly speaking, it would be in the neighborhood of probably 100,000 bales a year.

Q. Can you give me, roughly speaking, an idea of about the number of bales of cotton that are bought and sold that are

involved in the various transactions of your Cotton Exchange per year, taking the last four or five years as an average?

A. You mean contracts for future delivery?

Q. Yes?

A. We do not keep a record of that. You see, all those transactions are made from time to time,—sales and resales. Contracts virtually change hands probably, maybe, fifteen or twenty times before they are finally settled.

Q. I see. The same contract may, in the same day, then, under the customs of your Exchange, pass through a half dozen different hands or more?

A. Oh, yes. It passes through them in this way: I sell a contract, we will say—of course, I am not in the business.

Q. I understand?

A. But I sell a contract for, say, 100 bales good mid-
142 dling. My client may say, "I want to close that out". It is sold for hedging purposes, say. The next week they say, "We will close it out"; then I buy off a contract, and the man from whom I buy that contract naturally sells one, and it is really a continuation practically of the same thing. There may be a thousand bales that would represent just virtually perhaps a clear transfer from hand to hand.

Q. How are settlements made on those various contracts, where one man starting a sale of 100 bales, we will say, and after passing through various hands until the end of the day —how are the settlements made between the various brokers that have handled that 100 bales of cotton, or contract representing 100 bales of cotton?

A. First, settlements are made largely by notices of delivery—by the delivery of actual cotton. Turn to Rule 23 page 92.

Q. Rule 23 page 92?

A. Yes. It reads: "Where notice of delivery by the seller is required by a contract, it shall be given to the buyer five minutes before the opening of the future business, on the fifth business day prior to the date of delivery, except when delivery is to be made upon the last day of the month, in which case notice of delivery shall be given by the seller before fifteen minutes after twelve o'clock noon on the last day of the month upon which transferable notices may be issued.

"The party receiving the notice may transfer the same to another party, and it may be given from one transferee to another. Every transfer must be made promptly within twenty minutes after the time of receipt and every person receiving the notice shall endorse upon it the time of receipt.

Now, these transfer notices usually circulate on up to the closing hour of business of the day, and the party with whom it finally lodges, takes the cotton, just exactly the same as if I gave you a check for $100.00 to your order, and you endorse it over to him (indicating a person in the room) and he endorses it over to him and he endorses it, in turn, to Mr. Thorn and Mr. Thorn endorses it to him. Here would be six individual transactions, but it would be the transfer of this check from one to another.

Q. Merely $100.00 involved? A. Yes, sir.

Q. In making cotton settlements, they merely settle on the difference in price between the first and last sellers, don't they?

A. Not as you seem to intimate. I will show you how that is done. Take Rule 50, page 120: "All contracts for the future delivery of cotton shall be binding upon members, and of full force and effect until the quantity and qualities of cotton specified in such contracts shall have been delivered, and the price specified in said contracts shall have been paid. Nor shall any contract be entered into with any stipulation or understanding between parties, at the time of making such contract, that the terms of said contract, as specified in Rule 1, are not to be fulfilled (Rule 1 refers to the contract form), and the cotton received and delivered in accordance with said rule. Provided, however, that any party holding a contract against another, corresponding in all respects, except as to price, with one held by the other party against him, may close or cancel both by giving notice in writing to the opposite party, at any time before notice of delivery."

In other words, what you lawyers term a legal offset. "Sec. 2. All 'ring' settlements shall be made at the bid prices
143 posted by the Superintendent at 12:30 P. M., on the day on which the 'ring' is made, except on Saturday, when all 'rings' shall be settled at the bid prices posted by the Superintendent at 10 A. M., as provided for in Rule 52, governing margins," et cetera and et cetera. You can read on through the rule.

Now you asked a question with regard to settling on differences Simon-pure. Gambling on differences is absolutely prohibited, but you can make a legal offset, or, just as I have said, the two ways of settling contracts.

Rule 18, page 156, is as follows:

"Any member of the New Orleans Cotton Exchange, who shall be interested in or associated in business with, or who

shall act as the representative of, or shall knowingly execute any order or orders for the account of any organization, firm or individual engaged in the business of dealing in differences on the fluctuations of the market price of cotton—commonly known as a bucket shop—or for any one acting as agent for such organization, firm, corporation or individual, without a bona fide purchase and sale of property for an actual delivery shall be deemed guilty of unmercantile conduct, which renders him unworthy to be a member of the Exchange, and upon conviction thereof shall be expelled from membership in the Exchange".

By Mr. Johnson:

Q. Are Thorn & Maginnis members of the New Orleans Cotton Exchange, in good standing?

A. They are.

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The deposition of W. R. LEVERICH was offered and read in evidence on behalf of the plaintiffs, as follows:

Direct Examination

Read by Mr. Oglesby:

By Mr. Johnson:

Q. Mr. Leverich, where do you live? A. New Orleans.

Q. In whose employ are you? A. Thorn & Maginnis.

Q. How long have you been in their employ?

A. Since October, 1915—the 15th of October.

Q. What are your duties with Thorn & Maginnis?

A. Customers' and brokers' contract clerk.

Q. Do you remember any transactions made by one Fred Browne, defendant in this case, through your firm of Thorn & Maginnis?

A. He traded through us in cotton.

Q. Have you the original books of entry covering transactions made with the defendant Browne, from January 25th, to February 1st, 1917, inclusive, with you?

A. Yes.

Q. Please produce the book upon which you first entered a record of the transactions made by Mr. Browne, or made for Mr. Browne, on January 25th, 1917?

A. I produce the book. This is the book. This is the original book—the book of original entry.

Q. Does that book show the record of any transactions made for Mr. Browne, on January 25th, 1917?

A. It does.

Q. What are they?

Mr. McDonough: The same objection as to that.

The Court: Objection overruled and exception noted.

144 A. Purchase of 200 bales for future delivery, May cotton, at 16.83.

Q. From whom?

Mr. McDonough: The same objection.

The Court: Overruled and exception noted.

A. 100 bales from John F. Clark & Company and 100 bales from Hayward Howard & Company.

Q. Are they all the contracts purchased on that day for the defendant, Browne? A. No, sir.

Q. Proceed?

Mr. McDonough: The same objection.

The Court: Overruled and exception noted.

A. We also bought 300 bales of May at 16.84 from Newburger and 100 bales at 16.84 from Ellis.

Q. What do you mean by "Ellis" and "Newburger"? Are they firms here? A. Brokers.

Q. Were those entries made at the time of the opening of the transaction or subsequently, or when were they made?

A. Well, the memorandums were sent over from the Exchange to the office and entered up in this book here.

Q. At what time? A. That day; that same day.

Q. The same day that they occurred?

A. The same day that the transactions were made.

Q. Well, does that book of original entry show any purchases for the account of Mr. Browne on January 27th? If so, what were they and from whom were they purchased?

Mr. McDonough: I make the same objection.

The Court: Overruled and exception noted.

A. On January 27th, 1917, it shows a purchase of 100 May at 17.06 from J. M. Harrison & Company; 100 bales of May, at 17.06 from Pinckard & Kennedy.

Q. Well, does it show any transactions on the 29th of January?

Mr. McDonough: I make the same objection.

The Court: Overruled and exception noted.

A. On the 29th of January, we bought 400 bales at 17.08 from H. & B. Beer; also bought 100 bales of May cotton at

16.88 from H. D. Cothran & Company; also bought 200 bales of May at 16.88 from Pinckard & Kennedy.

Q. Well, does the book show any purchase made on January 30th?

Mr. McDonough: The same objection.

The Court: Overruled and exception noted.

A. Bought 200 May at 16.93 from John F. Clark & Company.

Q. Does it show any purchase on January 31st?

Mr. McDonough: The same objection.

145 The Court: Overruled and exception noted.

A. 100 bales of May cotton at 17.13 from Felix Couturie & Company; also 200 May at 17.13 from Shepard & Gluck.

Q. Were those entries made in the usual and regular course of business? A. Regular course of business.

Q. Does that record show any transactions for the account of Fred Browne, defendant, on February 1st? If so, what are they?

Mr. McDonough: The same objection.

The Court: Overruled and exception noted.

Q. These books run in twos. I have with me two books. We have the purchases in one book and the sales in the other book, but they both cover the sales and purchases of the same day.

Q. You have with you, then, two books?

A. Two books; purchases and sales books.

Q. These books show the transactions on February 1st?

A. Yes, sir.

Q. Please turn to your book and show what transactions were made for account of Fred Browne on February 1st?

Mr. McDonough: The same objection.

The Court: Overruled and exception noted.

A. February 1st, 1917, a sale of 2,000 bales of cotton at 14 cents to Airey & Stouse. That is all.

Q. I show you a paper and ask you to explain what it is?

A. A blank form of purchase and sale note used by Thorn & Maginnis. It shows bales, delivery, price and remarks for cotton bought, and bales, delivery, price and remarks for cotton sold.

Q. Is that a regular form used by Thorn & Maginnis?
A. Our ordinary form.

Mr. Johnson: I introduce the paper in evidence, and ask that it be marked Plaintiff's Exhibit 39.

Mr. McDonough: Objected to because it is a blank form with nothing on it.

The Court: On what ground do you think that is competent?

Mr. Oglesby: I don't know that it is material.

The Court: You base your claim on specific contracts?

Mr. Oglesby: Yes, sir.

The Court: And you have introduced the specific blanks, or specific contracts?

Mr. Oglesby: We do not insist on it.

The Court: Very well; it will be excluded.

146 Mr. Oglesby: I think that that would become admissible in the next deposition to show that that particular notice or notice like that was mailed to Mr. Browne by the mailing clerk. Of course, he couldn't introduce it because they are out of his hands.

The Court: That is true, when you have introduced testimony to show that certain notices were mailed to Mr. Browne, but I believe in view of the objection, it would be better to postpone that until after you have made that other showing.

Cross-Examination read by Mr. McDonough.

By Mr. Andrews:

Q. Mr. Leverich, in examining the book that is tendered here marked "Purchases No. 2 T & M", I notice that you have entered here the name of a customer, and the name of the broker. Have you any record by which the person whom the broker represents can be found? A. In the book?

By Mr. Johnson:

Q. For instance, whom Ellis represented in this case?
A. No.

By Mr. Andrews:

Q. There is no record in your office that will show, for instance, in the transactions about which you have testified

in regard to cotton being bought and sold, the name other than the man whom you represented and the broker through whom you purchased? A. That is our only record.

Q. Is not it true that the majority of sales made by brokers upon the Cotton Exchange are made for the account of someone else? A. They are.

Q. And the mere fact that the name of some person appears here does not mean that he is the seller, but merely is the agent of the seller? A. Yes, sir.

Q. Look at your records for February 1st, 1917, in "purchases", and tell me how many bales of cotton your firm purchased on that day? A. February 1st, 1917?

Q. Yes? All months? How many bales of cotton? On February 1st, 1917, how many bales of cotton did your firm purchase on that day?

A. Eleven thousand one hundred bales.

Q. Look at your sales record and tell me how many bales of cotton did your firm purchase on that day?

A. Twelve thousand one hundred bales.

Q. What was the average price of May cotton sold by your firm on that date? A. I have no way of arriving at that.

Q. You have no way of arriving at that?

A. I have not, unless I averaged the whole thing here.

147 Q. Well, can't you do that?

A. It is possible to be done.

Q. I would appreciate it if you would. Either that or refuse to do it. Every sale has the price set out opposite it, has it not? A. Naturally.

Q. And each one of these sales appear upon your records, don't they? A. They do.

Q. Now will you kindly tell me whether or not you will give me the average price for May cotton delivery sales on February 1st, 1917, as shown by the books of your firm?

A. I can. It will take some time.

Mr. Oglesby: Your Honor, we object on the ground that it is not competent under the decision in Lehman vs. Feld, 37 Fed. 852.

The Court: What is the object of the introduction, of that, Mr. McDonough?

Mr. McDonough: To show the nature of the transaction. Under the opinion of a majority of the Circuit Court of Appeals in this very case, they said it would be an issue of fact for the jury to determine, whether or not it was a gaming contract. Suppose they bought and sold a million bales of

cotton that day; that would show no intention to deliver because they couldn't do it.

The Court: If counsel will pass that I will look it up and can return to it later.

By Mr. Andrews:

Q. About how long will it take you?

A. May contracts?

Q. Yes, May contracts.

A. About ten or fifteen minutes, I presume.

Q. Now, will you kindly give me the average price of your sales on your May contracts at the same time?

A. I understand you want the purchases and sales of May cotton?

Q. Yes? A. Yes, sir.

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The deposition of SAMUEL CAREY COLEMAN, on being recalled, was offered and read in evidence on behalf of plaintiff, as follows:

Mr. Johnson: The witness Coleman, returns for the purpose of answering the question asked him by Mr. John-
148 son as to the price May contracts on the New Orleans Cotton Exchange on February 1st. Witness answers as follows:

A. Cotton for delivery in May, 1917, sold at the opening, on February 1st, at 14.50, then 14 cents, 13.80, 13.75 and 13 cents.

By Mr. Andrews:

Q. From what are you testifying?

A. The question asked me by Mr. Andrews, when I was testifying as to the price of May cotton.

Q. I am not asking you in response to whose question, but I ask you from what did you get the data or other means of refreshing your memory, from which you are testifying?

A. By the records of the New Orleans Cotton Exchange; in other words known as New Orleans Cotton Exchange market reports.

Q. You are testifying from the market report?

A. Yes, sir.

Q. Will you kindly let me see them?

A. Sure, and for your convenience I will mark those off.

Q. You are very kind; I thank you. This paper which I hold in my hand, and which I will ask the stenographer to

mark Exhibit B, is the paper from which you have given the information that you have just testified to? A. Yes.

Q. That information was not given from your recollection of the event?

A. No, sir; it was my own recollection and at the same time is a confirmation by official report.

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The deposition of D. C. VILLARS, on being recalled, was offered and read in evidence on behalf of plaintiff, as follows:

Direct Examination read by Mr. Oglesby.

By Mr. Johnson:

Q. I show you a paper, being Plaintiff's Exhibit 39; take the paper and tell me what it is?

A. We call this a customer's confirmation slip.

Q. For what purpose is the paper used, and how often is it used, and why is it used?

A. Well, we use this whenever a customer buys or sells any amount of cotton, and we put the number of bales, the month and the price on this, and forward it to him.

Q. State whether or not you notified the defendant, Browne, on each of the days that he purchased or sold cotton, on a blank form such as this Exhibit 39? A. We did.

Q. State who made out those mailed confirmations for the purchases of the 2,000 bales of cotton between January 25th, and January 31st, inclusive, and the sales of 2,000 bales of cotton on February 1st? Who made out those confirmations?

A. I did.

Mr. Oglesby: Now we offer that as Exhibit 39 which was excluded for the reason that it was not then connected up.

The Court: Very well. Then you may read the other now.

149 Q. State whether or not it is the custom of Thorn & Maginnis to send notices of this kind, as Plaintiff's Exhibit 39, to all customers, when such customers buy or sell cotton through them?

A. That is the rule of the office. It always has been.

Q. It is invariably done? A. Invariably done.

Q. Who makes out those confirmations?

Mr. McDonough: The same objection as to those slips that I have been making all the time.

The Court: Overruled and defendant excepts.

A. Mr. Villars.
Q. Who mails them?
A. The office boy, Mr. George Dillenkoffer.

Mr. McDonough: The same objection to exhibit 39.

The Court: Overruled and defendant excepts.

Said exhibit 39 being in words and figures as follows:

"Plaintiff's Ex. 39.

Thorn & Maginnis

Cotton Brokers,

209 Varieties Place

New Orleans,.....191..

M.....

.....

We beg to confirm the following transactions in cotton for future delivery made this day for your account and risk, subject to the rules and regulations of the New Orleans Cotton Exchange and United States Cotton Futures Act, Section Five.

| Bought | | | | Sold | | | |
|---|---|---|---|---|---|---|---|
| Bales: | Delivery: | Price: | Remarks: | Bales: | Delivery | Price: | Remarks |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

On all marginal business we reserve the right to close transactions when margins are running out without further notice.

Limited orders are considered good only for the day on which they are received, unless marked "Open," which means they are in force until executed or cancelled.

All Stop Orders are considered Open unless otherwise specified. E. & O. E.

THORN & MAGINNIS
Per ....."

By Mr. Johnson:
Q. Have you copies of those confirmations with you?
A. I have.
Q. Please produce them? A. I produce them.

Mr. Johnson: I offer in evidence the papers produced by the witness, and ask that the same be marked Plaintiff's Ex-

hibit 40, Plaintiff's Exhibit 41, Plaintiff's Exhibit 43, Plaintiff's Exhibit 44 and Plaintiff's Exhibit 45, and Plaintiff's Exhibit 42.

By Mr. Andrews:

Q. When were these made?

A. These confirmations.

150 Q. These slips that I hold in my hand?

A. The duplicates?

Q. Yes? A. They were made today.

Mr. McDonough: The defendant objects to the introduction of the slips, and to each of them.

The Court: Overruled, and exception noted.

Said Exhibits being in words and figures as follows:

"Plaintiff's Ex. 40

Thorn & Maginnis

Cotton Brokers,

209 Varieties Place

New Orleans, Jan. 31st 1917

Mr Fred Browne
Crowder, Okla.

We beg to confirm the following transactions in cotton for future delivery made this day for your account and risk, subject to the rules and regualtions of the New Orleans Cotton Exchange and United States Cotton Futures Act, Section Five.

| Bought | | | | Sold | | | |
|---|---|---|---|---|---|---|---|
| Bales: | Delivery: | Price: | Remarks: | Bales: | Delivery: | Price: | Remarks |
| 300 | May | 17.13 | | | | | |

On all marginal business we reserve the right to close transactions when margins are running out without further notice.

Limited orders are considered good only for the day on which they are received, unless marked "Open", which means they are in force until executed or cancelled.

All Stop Orders are considered Open unless otherwise specified. E. & O. E.

THORN & MAGINNIS
Per J. "

(Duplicate)

"Plaintiff's Ex. 41

Thorn & Maginnis

Cotton Brokers,

209 Varieties Place

New Orleans, Jan. 30th 1917

Mr. Fred Browne,
Crowder, Okla.

We beg to confirm the following transactions in cotton for future delivery made this day for your account and risk, subject to the rules and regulations of the New Orleans Cotton Exchange and United States Cotton Futures Act, Section Five.

| Bought | | | | Sold. | | | |
|---|---|---|---|---|---|---|---|
| Bales: | Delivery: | Price: | Remarks: | Bales: | Delivery: | Price: | Remarks |
| 200 | May | 16.93 | | | | | |

On all marginal business we reserve the right to close transactions when margins are running out without further notice.

Limited orders are considered good only for the day on which they are received, unless marked "Open", which means they are in force until executed or cancelled.

All Stop Orders are considered Open unless otherwise specified E. & O. E.

THORN & MAGINNIS
(Duplicate) Per J. "

151 Said Exhibits being in words and figures as follows:

"Plaintiff's Ex. 42

Thorn & Maginnis

Cotton Brokers,

209 Varieties Place

New Orleans, Jan. 29th 1917

Mr. Fred Browne,
Crowder, Okla.

We beg to confirm the following transactions in cotton for future delivery made this day for your account and risk, sub-

ject to the rules and regulations of the New Orleans Cotton Exchange and United States Cotton Futures Act, Section Five.

| Bought | | | | Sold | | | |
|---|---|---|---|---|---|---|---|
| Bales: | Delivery: | Price: | Remarks: | Bales: | Delivery: | Price: | Remarks |
| 400 | May | 17.08 | | | | | |
| 300 | do | 16.88 | | | | | |

On all marginal business we reserve the right to close transactions when margins are running out without further notice.

Limited orders are considered good only for the day on which they are received, unless marked "Open", which means they are in force until executed or cancelled.

All Stop Orders are considered Open unless otherwise specified. E. & O. E.

THORN & MAGINNIS
(Duplicate) Per J. "

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"Plaintiff's Ex. 43

Thorn & Maginnis

Cotton Brokers,

209 Varieties Place

New Orleans, Jan. 27th, 1917.

Mr. Fred Browne,
Crowder, Okla.

We beg to confirm the following transactions in cotton for future delivery made this day for your account and risk, subject to the rules and regulations of the New Orleans Cotton Exchange and United States Cotton Futures Act, Section Five.

| Bought | | | | Sold. | | | |
|---|---|---|---|---|---|---|---|
| Bales: | Delivery: | Price: | Remarks: | Bales: | Delivery: | Price: | Remarks |
| 200 | May | 17.06 | | | | | |

On all marginal business we reserve the right to close transactions when margins are running out without further notice.

Limited orders are considered good only for the day on which they are received, unless marked "Open", which means they are in force until executed or cancelled.

All Stop Orders are considered Open unless otherwise specified E. & O. E.

THORN & MAGINNIS
(Duplicate) Per J. "

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152 Said Exhibits being in words and figures as follows:

"Plaintiff's Ex. 44

Thorn & Maginnis

Cotton Brokers,

209 Varieties Place

New Orleans, Jan. 25th, 1917.

Mr. Fred Browne,
Crowder, Okla.

We beg to confirm the following transactions in cotton for future delivery made this day for your account and risk, subject to the rules and regulations of the New Orleans Cotton Exchange and United States Cotton Futures Act, Section Five.

| Bought | | | | Sold | | | |
|---|---|---|---|---|---|---|---|
| Bales: | Delivery: | Price: | Remarks: | Bales: | Delivery: | Price: | Remarks |
| 200 | May. | 16.83 | | | | | |
| 400 | do | 16.84 | | | | | |

On all marginal business we reserve the right to close transactions when margins are running out without further notice.

Limited orders are considered good only for the day on which they are received, unless marked "Open", which means they are in force until executed or cancelled.

All Stop Orders are considered Open unless otherwise specified. E. & O. E.

THORN & MAGINNIS
(Duplicate) Per J. "

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"Plaintiff's Ex. 45

Thorn & Maginnis

Cotton Brokers,

209 Varieties Place

New Orleans, Feb. 1st, 1917

Mr. Fred Browne,
Ft. Smith, Ark.

We beg to confirm the following transactions in cotton for future delivery made this day for your account and risk, subject to the rules and regulations of the New Orleans Cotton Exchange and United States Cotton Futures Act, Section Five.

| Bought | | | | Sold. | | | |
|---|---|---|---|---|---|---|---|
| Bales: | Delivery: | Price: | Remarks: | Bales: | Delivery: | Price: | Remarks |
| | | | | 2000 | May | 14.00 | |

On all marginal business we reserve the right to close transactions when margins are running out without further notice.

Limited orders are considered good only for the day on which they are received, unless marked "Open", which means they are in force until executed or cancelled.

All Stop Orders are considered Open unless otherwise specified E. & O. E.

THORN & MAGINNIS
(Duplicate) Per J. "

153 Q. Have you carefully examined these slips and compared them with your originals? A. I have.

Q. State whether or not you mailed, or caused to be mailed, and, if you caused to be mailed, how did you do so, these slips, to the defendant, Browne?

A. I make them out and after that I have no further thing to do with them.

Q. Don't you do anything with them at all?

A. I simply give them to Mr. Kehoe, and he checks them, and after that I have no further thing to do with them.

Q. Who puts them in the envelope? A. The office boy.

Q. Who mails them? A. The office boy.

Q. State whether or not it is the custom, and how frequently it is the custom, to mail out these confirmation slips to customers? A. It has always been the custom.

Q. Is it the invariable rule of the office to mail them all the time? A. It is.

No cross examination.

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The deposition of GEORGE DILLENKOFFER was offered and read in evidence on behalf of the plaintiffs, as follows:

Direct Examination

Read by Mr. Oglesby:

Mr. Johnson:

Q. How old are you, son? A. Sixteen.

Q. How long have you been in the employment of Thorn & Maginnis? A. About two years and nine months.

Q. Do you deposit the letters mailed by Thorn & Maginnis in the post office box? A. Yes, sir.

Q. Is that your usual regular duty? A. Yes, sir.
Q. Do you do that every day? A. Yes, sir.
Q. Well, I show you a confirmation slip, such as was said to have been sent to Mr. Browne, the defendant in this case. Do you remember mailing him any of these slips? A. Yes, I do.
Q. Did you put those in the envelopes yourself, or someone else? A. Yes, I put them in the envelopes myself.
Q. Did you address the envelopes?
A. No, sir, the stenographer addresses them.
Q. You put them in envelopes? A. Yes, sir.
Q. Is it customary to send these out every day?
A. Yes, sir.
Q. These confirmation slips? A. Yes, sir.
Q. Where did you mail them?
A. In the United States Mail box in the Hennen Building.

Cross examination waived.

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The deposition of W. R. LEVERICH, recalled, was offered and read in evidence on behalf of the plaintiffs as follows:

By Mr. Andrews:

Q. Mr. Leverich, have you been able to obtain the aver-
154 age price at which your firm sold May delivery cotton on February 1st, 1917? A. I have.
Q. What was that?
A. The average price of May cotton sold by our firm on February 1st, was 14.39.
Q. What was the average price at which they bought?
A. The average price of purchase was 14.78.

Mr. Oglesby: That is all the depositions.

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(Articles 1, 2, and 3 of the New Orleans Cotton Exchange.)

Mr. Cravens: I desire to read Articles 1 to 3 of the New Orleans Cotton Exchange: (Reading:)

"Article I. Title.

The title of this Association shall be The New Orleans Cotton Exchange.

"Article II. Purposes.

The purposes of this Association shall be to provide and maintain suitable rooms for a cotton and Commercial Exchange, in the City of New Orleans; to adjust controversies between members; to establish just and equitable principles,

uniform usages, rules and regulations, and standards for classification, all of which shall be for the government of transactions in cotton or other articles or matters of trade between members; to acquire, preserve and disseminate information connected therewith; to decrease the risks incident thereto, and generally to promote the interests of the trade and the amount of the cotton and other business in the City of New Orleans.

"Article III. Officers.

The Board of Directors of this Association shall consist of a President, Vice-President, Treasurer, and twelve Directors, all of whom shall be elected annually on the first Monday in December."

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L. P. BARKDULL, a witness sworn on behalf of the plaintiffs, testified as follows:

Direct Examination.

Q. What is your name? A. L. P. Barkdull.
Q. Where do you live? A. Fort Smith, Arkansas.
Q. What business are you engaged in?
A. The cotton business.
Q. How long have you been engaged in that business?
A. Thirty years.
Q. What do you mean by the Cotton business?
A. Spot business.
Q. Are you familiar with the transactions of purchase and sale of cotton on the New Orleans and New York cotton exchanges? A. I am.

155 Mr. McDonough: Objected to as incompetent, irrelevant and immaterial.

The Court: That is a general objection?

Mr. McDonough: That is all. I will waive that for the present.

Q. Are you familiar with the language used in ordering?
A. I am.
Q. I show you a telegram dated February 1st, 1917, at Fort Smith, Arkansas, marked Plaintiff's Exhibit 15, reading: Fort Smith, Arkansas, 8:30 AM, February 1, 1917. Thorn & Maginnis, New Orleans, La. Stop ten seventeen twenty and ten seventeen fifteen. Signed Fred Browne. I wish you would state to the jury what that means.

Mr. McDonough: The same objection I make to that as on yesterday because it involved a custom.

The Court: Overruled, and exception.

A. It means to stop the loss on ten hundred at 17.20 and ten hundred at 17.15.

Q. Well, if you had 2,000 bales bought on the New Orleans market and sent that wire, stop ten seventeen twenty and stop ten seventeen fifteen, what would it mean to the broker receiving it?

A. It means when he receives that order he must execute it at those figures if possible.

Mr. McDonough: The same objection as to that.

The Court: Overruled.

Mr. McDonough: Exception.

(Continuing) And if they cannot execute it at the figures mentioned, they are to execute it on the market on the best terms possible.

Q. If it goes below that they are to sell it at the best
156 possible price? A. Yes, sir.

Q. If they cannot get that price to sell at the best possible price? A. Yes, sir.

Q. Does it make any difference how much lower it goes?

A. No.

Q. If that telegram were received by brokers Thorn & Maginnis before the Exchange opened, what would be their duty?

Mr. McDonough: Objected to because calling for a conclusion.

Q. If you know?

Mr. McDonough: It calls for a conclusion and because it is otherwise inadmissible for the reasons heretofore stated. Mr. Barkdull is not a member of the New Orleans Cotton Exchange.

Q. How long have you had transactions with members of the New Orleans Cotton Exchange and other cotton exchanges?

Mr. McDonough: I object.

The Court: Overruled.

Mr. McDonough: I except.

A. I suppose 20 or 25 years.

Q. Are you familiar with the duties of the brokers on the New Orleans Cotton Exchange?

A. In executing orders, I am.

Q. In executing orders; that is what I mean? A. Yes.

Q. If a broker received that telegram before the opening of the Exchange on the morning of the 1st of February, what would be his duty when the exchange opened?

Mr. McDonough: The same objection. And that includes the objection that it calls for a conclusion.

The Court: Overruled.

Mr. McDonough: Exception.

157 A. His duty would be to attempt to execute this order at this price, and then if he finds that he cannot execute it at this price, then he has to cry his offers until somebody is ready to take the other end of the contract.

Q. You mean he is to execute them at the best price he can get on the market? A. At the best price he can get.

The Court: Let me see if I understand that. You have stated that under that telegram it was the duty of the broker to go on the market and attempt to sell it at that price?

A. Yes, sir.

Q. Now, if the price had advanced after that he was neve to execute that order?

A. No, sir; not until it reached this figure.

Q. On going down? A. On going down.

Q. And if the market opened at a price less than the price stated in the telegram he was still to offer it?

A. He was still to offer it.

Q. At such lower price until it was accepted?

A. Yes, sir.

Q. That is, lowering the price from time to time until it was accepted?

A. If there was no one ready to take it at the price he offered then he continued to lower the price until he was ready to accept it.

By Mr. Oglesby:

Q. Mr. Barkdull, if a telegram such as you have before you there, plaintiff's exhibit 15, was received by a broker at 15 or 20 minutes before the market opened, state whether or not it would be the duty of the broker to wire his customer what he should do after receiving that telegram?

158 Mr. McDonough: Objected to for the same reason.

The Court: Overruled.

Mr. McDonough: Exception.

A. No, he had a specific order and he had only one duty to perform and that was to attempt to execute this order.

Cross-Examination waived.

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CHARLES B. THORN, one of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Going:

Q. Your name is Charles B. Thorn? A. Yes, sir.
Q. Where do you reside? A. New Orleans.
Q. How long have you lived there? A. Since birth.
Q. Born and reared in New Orleans, Louisiana?
A. Yes, sir.
Q. What business are you engaged in at the present time?
A. I am in the banking business now.
Q. With what bank are you connected?
A. Vice President, Interstate Trust & Banking Company of New Orleans.
Q. How long have you occupied that position?
A. About a year and a half I should say.
Q. You were formerly engaged in the brokerage business in New Orleans? A. Yes, sir.
Q. What was the style of your firm?
A. Thorn & Maginnis.
159 Q. Then you are one of the plaintiffs in this case?
A. I am.
Q. How long were you engaged in that business?
A. I engaged in that business about 1895.
Q. In what capacity were you first engaged?
A. I was with the firm of French & Hobson.
Q. What did you do?
A. I used to handle contracts across the ring.
Q. After that what was it?
A. I started a firm of my own.
Q. When was your firm organized?
A. You mean this last firm?
Q. You organized a firm prior to the last firm? A. Yes.
Q. What was the style of that firm?
A. Thorn & Maginnis.
Q. The first one? A. Yes, sir.
Q. Do you recall when the firm of Thorn & Maginnis was organized?
A. Right offhand I don't. I can refresh my memory.

Q. Several years ago? A. Over ten.

Q. How long had you been a member prior to the dissolution of the firm of Thorn & Maginnis in the New Orleans Cotton Exchange? A. Since 1895.

Q. Are you acquainted with the defendant Fred Browne?

A. I met him the first time at the last trial.

Q. During the year of 1917 your firm was actively engaged in business in New Orleans? A. It was.

Q. The firm of Thorn & Maginnis has sued Fred
160 Browne for $23,215.00 balance, a balance which you allege is due your firm for money expended in his behalf. Did you have any business transactions during January 1917 with him? A. We did.

Q. What was the first business transaction that you had with him and when?

A. My recollection is that the 22nd of September, 1916.

Q. You say you didn't know him personally at that time?

A. No, no.

Q. Now what were your duties, Mr. Thorn, at that time, in connection with your firm? What did you do?

A. I should say looked more or less generally after the finance and general supervision of the firm.

Q. How did you become acquainted with Mr. Browne in a business way?

A. His name was brought to our attention through some of the trade books. I refer particularly to the cotton shippers book.

Q. Is that a book that is used by the members of the New Orleans Cotton Exchange in looking up people who are engaged in the cotton business?

A. It was one of the first books we always used when a new name came to us.

Q. Have you the book now in which Mr. Browne's name appeared? A. I think you hold it.

Q. What does the book contain?

A. It contains a list of cotton buyers and cotton shippers, at most cities or towns in the cotton belt where a sufficient amount of cotton is handled to be noted.

Q. How did you secure the name of Fred Browne?

A. Through this book.

161 Q. Is there a name in there?

A. Yes, sir; it is right before me.

Q. Turn to the page.

Mr. McDonough: It is objected to, Your Honor. I do not see upon what authority it is sought to introduce the appearance of a man's name in a book.

Mr. Going: The name appears in that book as a cotton buyer. The question of our intentions, the reasons that we had for making up our mind is a very material one.

Mr. McDonough: There is no showing as to the authenticity of it.

Mr. Going: If there is objection to the introduction of it, I will just withdraw the question.

Q. You found his name in a book in which there appeared the names of cotton buyers?

Mr. McDonough: That is objected to as incompetent, irrelevant and immaterial. I withdraw that objection.

A. I did.

Q. After having noted from this book that Mr. Browne was a cotton buyer at Crowder City, Okla. what did you do, if anything, towards the soliciting of his business?

A. We, in the ordinary course of business, addressed people that are in business, soliciting their business, soliciting their hedging business in cotton.

Q. Any other business outside of hedging?

A. Why, receiving and delivering cotton on contract when called upon to do so.

Q. Now Mr. Thorne during your experience as a member of the New Orleans Cotton Exchange, state to the jury whether or not you are familiar with the terminology and the
162 terms and ordinary expressions used in connection with the cotton trade on the New Orleans Cotton Exchange?

A. I am.

Q. Now you have filed as an exhibit to the deposition of Mr. Kehoe in this case, quite a number of telegrams. I will ask you to examine them and state whether or not they are in the customary form of telegrams received from customers?

Mr. McDonough: Objected to as incompetent, irrelevant and immaterial, and for the same reasons heretofore urged.

The Court: The objection is made upon the grounds heretofore urged. Now, I understand the objection heretofore urged to be that their own evidence showed a contract or contracts, or tended to show a contract or contracts in violation of the United States Cotton Futures Act. Am I right about that, Mr. McDonough?

Mr. McDonough: Yes, sir; that they do not show a contract in compliance with that act.

Q. Several years ago? A. Over ten.

Q. How long had you been a member prior to the dissolution of the firm of Thorn & Maginnis in the New Orleans Cotton Exchange? A. Since 1895.

Q. Are you acquainted with the defendant Fred Browne?

A. I met him the first time at the last trial.

Q. During the year of 1917 your firm was actively engaged in business in New Orleans? A. It was.

Q. The firm of Thorn & Maginnis has sued Fred
160 Browne for $23,215.00 balance, a balance which you allege is due your firm for money expended in his behalf. Did you have any business transactions during January 1917 with him? A. We did.

Q. What was the first business transaction that you had with him and when?

A. My recollection is that the 22nd of September, 1916.

Q. You say you didn't know him personally at that time?

A. No, no.

Q. Now what were your duties, Mr. Thorn, at that time, in connection with your firm? What did you do?

A. I should say looked more or less generally after the finance and general supervision of the firm.

Q. How did you become acquainted with Mr. Browne in a business way?

A. His name was brought to our attention through some of the trade books. I refer particularly to the cotton shippers book.

Q. Is that a book that is used by the members of the New Orleans Cotton Exchange in looking up people who are engaged in the cotton business?

A. It was one of the first books we always used when a new name came to us.

Q. Have you the book now in which Mr. Browne's name appeared? A. I think you hold it.

Q. What does the book contain?

A. It contains a list of cotton buyers and cotton shippers, at most cities or towns in the cotton belt where a sufficient amount of cotton is handled to be noted.

Q. How did you secure the name of Fred Browne?

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A. Yes, sir; it is right before me.

Q. Turn to the page.

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Mr. Going: The name appears in that book as a cotton buyer. The question of our intentions, the reasons that we had for making up our mind is a very material one.

Mr. McDonough: There is no showing as to the authenticity of it.

Mr. Going: If there is objection to the introduction of it, I will just withdraw the question.

Q. You found his name in a book in which there appeared the names of cotton buyers?

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A. I did.

Q. After having noted from this book that Mr. Browne was a cotton buyer at Crowder City, Okla. what did you do, if anything, towards the soliciting of his business?

A. We, in the ordinary course of business, addressed people that are in business, soliciting their business, soliciting their hedging business in cotton.

Q. Any other business outside of hedging?

A. Why, receiving and delivering cotton on contract when called upon to do so.

Q. Now Mr. Thorne during your experience as a member of the New Orleans Cotton Exchange, state to the jury whether or not you are familiar with the terminology and the
162 terms and ordinary expressions used in connection with the cotton trade on the New Orleans Cotton Exchange?

A. I am.

Q. Now you have filed as an exhibit to the deposition of Mr. Kehoe in this case, quite a number of telegrams. I will ask you to examine them and state whether or not they are in the customary form of telegrams received from customers?

Mr. McDonough: Objected to as incompetent, irrelevant and immaterial, and for the same reasons heretofore urged.

The Court: The objection is made upon the grounds heretofore urged. Now, I understand the objection heretofore urged to be that their own evidence showed a contract or contracts, or tended to show a contract or contracts in violation of the United States Cotton Futures Act. Am I right about that, Mr. McDonough?

Mr. McDonough: Yes, sir; that they do not show a contract in compliance with that act.

The Court: That is the only ground?

Mr. McDonough: That is the only one I recall; the record will show the objections that were made.

The Court: Don't you think that is hardly fair? I am trying to get at what your objection is.

Mr. McDonough: That is all I am urging now, Your Honor.

The Court: Very well; objection overruled.

Mr. McDonough: Save our exception.

A. They are in the customary form.

Mr. McDonough: The further objection I want to make to that; I didn't understand the latter part of it; that the regulations prescribed the form of contract and hence the objection would be well taken on that ground, as I view it. The
163 New Orleans Cotton Exchange regulations already introduced prescribe the form of the contract and this witness would not be permitted to add a conclusion.

The Court: I understand that the question to Mr. Thorn, whether these telegrams are in the ordinary form of telegrams that are sent in connection with that business. The objection will be overruled.

Mr. McDonough: Save an exception.

Q. What does "Buy four May" if sent in January, say, 1917, mean according to the usages and terms and terminology of the New Orleans Cotton Exchange?

A. It means buy four hundred bales of cotton for May delivery on the New Orleans Cotton Exchange.

Q. The telegram dated February 1, 1917, saying stop ten seventeen twenty and ten seventeen fifteen, what did that mean according to the usages, terms and terminology of the New Orleans Cotton Exchange at that time?

A. It meant to sell cotton ten contracts of a hundred bales each for delivery in May at 17.20 provided that figure was touched.

Mr. McDonough: That part of his answer that he is coming to is objected to for the same reason urged against the same testimony of the other witnesses.

The Court: Objection will be overruled.

(Continuing) But in the event that figure was touched it then became [out] duty to sell at that price if possible, or the next best price obtainable on the market.

Q. What did it mean with reference to the ten seventeen fifteen, the balance of the telegram?

A. It meant to sell ten May contracts for delivery in New Orleans at 17.15, provided it was possible to sell at that price, and if the market was lower, it then became a market
164 order and had to be sold at the best price obtainable.

Q. Well, did you execute that order?

A. Mr. Coleman did.

Mr. McDonough: Were you present at the execution of it?

A. I was on the floor of the exchange.

Q. I didn't ask you that. Were you present at the execution of it?

A. Well, I should say I was, if you call it present just as we are here.

The Court: Did you know of its being executed at the time it was executed? Did you have personal knowledge of its being executed at the time it was executed?

A. I didn't see it until after it was executed.

Mr. McDonough: I move to exclude it.

The Court: Very well, the objection will be sustained.

Q. Now do you know of the sending of a telegram filed as exhibit 16 to your deposition, a short while afterwards, to Mr. Browne notifying him of the sale of his cotton?

A. Yes, sir; I know that that was sent.

Q. That is the telegram which reads "Sold twenty May fourteen cents"? A. Yes.

Q. What is the date of it? A. February 1st, 1917.

Q. Now Mr. Thorn, prior to that time, how many bales of cotton had you sold, had your firm purchased for Mr. Browne?

A. At that time we had two thousand bales for him.

The Court: Let me see if I understand that. Do you mean by that, Mr. Going, that had been purchased from the beginning?

Mr. Going: No, sir.

Q. At the time you sold the two thousand bales, how many bales did you have on hand as purchased for Mr. Browne?

165 A. Two thousand bales.

Q. So in the sale of the two thousand bales you only sold out what he had on hand on the contracts with you?

A. That is correct.

Q. Tell the jury whether or not the persons from whom you bought, executed orders, contracts or agreements to deliver you the two thousand bales?

Mr. McDonough: Objected to as incompetent, irrelevant and immaterial, and because the contracts, if executed, are themselves the best evidence of their execution and existence.

The Court: Will you follow that up by introducing the contracts?

Mr. Going: Yes, sir.

The Court: Overruled.

Mr. McDonough: Exception.

Mr. Cravens: They have been introduced already.

The Court: Now I understand by that, that this testimony will apply to what you have introduced as the contracts?

A. That is it.

The Court: Overruled.

Mr. McDonough: Exception. And does not apply to anything that has not been introduced?

Mr. Going: No, sir.

The Court: I understand that this applies simply to the contracts that have been introduced and testified to.

Mr. McDonough: Then it is objectionable because they have been already introduced and testified about.

The Court: Overruled.

Mr. McDonough: Exception.

Q. Examine the contracts marked Exhibits 16½ to 26, inclusive, and state whether or not those are the contracts

166 signed by the parties from whom you bought?

A. Those are the slips.

Q. Examine Exhibit 27 and state whether or not that is the contract of the parties who agreed to accept the 2,000 bales which you sold for Fred Browne? A. It is.

Mr. McDonough: Objected to because counsel puts in the question other than the contract itself. He says in which the parties agreed to accept. That is a question of law.

The Court: I think, Mr. Going, you should form your question this way: Whether that is or is not the contract made with the persons to whom you sold. It will show for itself the terms.

Q. Let the question go in the form the court suggests?
A. It is.

Mr. McDonough: The Court understands that the same objection made to the introduction of this witness as made to the other witnesses, is obtaining now? At least I want to urge that now. I don't want, in other words, to be held to have waived my objections to these offered contracts. I stated this the other day and they are in the record, and I make the same objection now against them.

The Court: I understand your objection to be based on the ground that they are not contracts in compliance with the Cotton Futures Act of Congress?

Mr. McDonough: Yes, sir; I called the Court's attention to the specific grounds the other day, that they had not introduced the sale contracts and the bought contracts. In other words, the New Orleans Cotton Exchange regulations provide for two parts. They introduce the bought contracts and
167 do not introduce the completed contract.

The Court: The objection is overruled.

Mr. McDonough: Save our exception.

Q. At the time you received contracts of the persons from whom you bought the two thousand bales of cotton for Mr. Brown, did your firm execute contracts and deliver to them agreeing to accept and receive the cotton that was bought?

Mr. McDonough: That is objected to, Your Honor, as calling for a conclusion? Have you the contracts?

Mr. Going: I am just going to show them in right now.

The Court: But you are showing in advance, it seems to me, when you ask him about what the contract purports to do. I think you could state what the contract says.

Mr. Going: My only purpose is to separate them from the sold contracts. One is to receive and the other is to deliver.

Mr. McDonough: The point is you are proving the contracts without showing the contracts.

Q. I am asking if you have these contracts in your possession now that you sold? A. They are here in court.
Q. Will you produce them? (Witness produces papers)
Q. Examine the instruments which I hand you and state what they are?

Mr. McDonough: They should be first identified so we can know what they are. I object to his telling what they are. They speak for themselves.

The Court: He may answer.

A. They are contracts to buy and sell as entered—

Mr. McDonough: So far as I can see,—they have not been submitted—I don't know whether they refer to this
168 transaction or not.

The Court: Do you want them submitted to you?

Mr. McDonough: Yes, sir, I would like to see them.

The Court: Very well; I wish you would submit them.

Mr. McDonough: And I want to pursue the usual ordinary course, that they first be identified by the stenographer.

By Mr. Going:
Q. I hand you an instrument of writing dated January 25, 1917, purporting to have been signed by Thorn & Maginnis, written on the letter heads of C. P. Ellis & Company, and ask you if you know what that is?

Mr. McDonough: That is objected to because not identified.

(Here counsel passed to Reporter said paper for identification, and same was marked "Exhibit A".)

Mr. McDonough: The same objection that was made to this offer the other day.

The Court: The objection will be overruled.

Mr. McDonough: Exception.

Q. On the seventh line under bales of cotton appears the signature of Thorn & Maginnis. Who wrote that?
A. Mr. Kehoe.

Q. Was he a member of the firm of Thorn & Maginnis?
A. He was.
Q. (Reading) "New Orleans, La. Jan. 25, 1917. Bought from C. P. Ellis & Company of New Orleans, La. and agreed to receive from them subject to the By-Laws, Rules and Conditions of the New Orleans Cotton Exchange, and subject to the United States Cotton Futures Act, Section 5, and amendments thereto. 100 May 16.17; 300 May 16.83; 100 May 16.90; 200 May 16.81; 100 May 16.84". Any cotton on that
169 purchase made by you for the benefit of the defendant, Browne?

Mr. McDonough: Objected to.

The Court: He may answer.

Mr. McDonough: Exception. The same objection as before, that is, that there is nothing in that writing showing Browne connected with it in any way.

The Court: Overruled.

Mr. McDonough: Exception.

A. I should say that there was; I would have to identify it however.

The Court: Do you offer that in testimony?

Mr. Going: Yes, sir.

Mr. McDonough: Objected to for the same reasons.

The Court: Overruled.

Mr. McDonough: Exception.

Said exhibit A being in words and figures as follows:

"Ex. A, J. K. P.

C. P. Ellis & Co.,
502 Hibernia Bank Bldg.

New Orleans, La., Jan. 25th, 1917.

Bought From

C. P. Ellis & Co., of New Orleans, La., and agreed to Receive from them subject to the By-laws, Rules and Conditions of the

New Orleans Cotton Exchange

and subject to the United States Cotton Futures Act, Sec. 5, and amendments.

| Bales Cotton | | Delivery | At Cents per Pound for Middling. |
|---|---|---|---|
| one | Hundred | May | 16.70 |
| Three | " | " | 16.83 |
| Two | " | " | 16.83 |
| One | " | " | 16.90 |
| Two | " | " | 16.81 |
| One | " | | 16.84 |

Duplicate (Signed) THORN & MAGINNIS."

Q. I hand you another slip dated New Orleans, La. January 25, 1917, and ask that it be marked Exhibit b, and have you state what that is?

A. It is a contract for 200 bales of Cotton bought from Hayward, Howard & Company of New Orleans.

170 Q. Who is it signed by?

A. Thorn & Maginnis, by Mr. Kehoe.

Q. Do you know the signature of Mr. Kehoe?

A. I do.

Mr. McDonough: It is objected to for the same reasons as urged against the others.

The Court: Overruled.

Mr. McDonough: Exception.

Said exhibit B being in words and figures as follows:

"Ex. B, J. K. P.

Hayward, Howard & Co.
826 Common Street

New Orleans, La. Jan. 25, 1917.

Bought From

Hayward, Howard & Co., of New Orleans, La., and agreed to Receive from them subject to the By-Laws, Rules and Conditions of the

New Orleans Cotton Exchange

and subject to the United States Cotton Futures Act, Section 5.

| Bales Cotton | Delivery | At Cents per Pound for Middling. |
|---|---|---|
| 100 | May | 16.83 |
| 100 | Mch | 16.74 |

(Signed) THORN & MAGINNIS".

Q. I hand you another slip dated January 25, 1917 and ask that it be marked, and have you examine it and state what it is?

A. It is a contract for cotton bought by Thorn & Maginnis from Silvan Newburger & Company for 300 bales of cotton, May delivery, at 16.84 cents per pound.

Q. Whose signature to the bottom of the contract?

A. Thorn & Maginnis signed by Mr. Kehoe.

Mr. McDonough: Objected to for the same reasons.

The Court: Overruled.

Mr. McDonough: Exception.

Said Exhibit being in word and figures as follows:

"Ex. C, J. K. P.

Silvan Newburger & Co.
839 Gravier Street New Orleans, La., Jan. 25, 1917.

Bought From
Silvan Newburger & Co., of New Orleans, La. and Agreed to Receive from them subject to the By-Laws, Rules and Conditions of the

New Orleans Cotton Exchange
and subject to the United States Cotton Futures Act, Section 5.

| Bales Cotton | Delivery | At cents per Pound For Middling. |
|---|---|---|
| three Hundred | May | 16.84 |

(signed) THORN & MAGINNIS."

171 Q. I hand you another slip dated January 27, 1917, and ask that it be marked Exhibit D, and that you examine it and state what it is.

A. It is a contract for one [hundre] bales of cotton May delivery at 17.06 from Pinckard & Kennedy of New Orleans by Thorn & Maginnis.

Q. Is the signature of Thorn & Maginnis to that contract?

A. Thorn & Maginnis signed by Mr. Kehoe.

Mr. Going: I now offer Exhibit D in testimony.

Mr. McDonough: Objected to for the same reasons.

The Court: Overruled.

Mr. McDonough: Exception.

Said Exhibit D being in words and figures as follows:

"Ex. D, J. K. P.

Pinckard & Kennedy
New Orleans, La.

New Orleans, La., Jan. 27, 1917.

Bought From
Pinckard & Kennedy, of New Orleans, La., and agreed to Receive from them subject to the By-laws, Rules and Conditions of the
New Orleans Cotton Exchange
and subject to the United States Cotton Futures Act, Section 5.

| Bales Cotton | Delivery | At Cents Per Pound | Tax Value |
|---|---|---|---|
| one Hundred | May | For Middling 17.06 | |

(Signed) THORN & MAGINNIS".

Q. I hand you another slip dated January 27, 1917, purporting to have been signed by Thorn & Maginnis, marked Exhibit E, and ask you to state what that is?

A. A contract for one hundred bales of cotton, May delivery, bought at 17.06 from Harrison & Lawrence of New Orleans, signed by Thorn & Maginnis, by Mr. Kehoe.

Mr. Going: I now offer the slip as Exhibit E.

Mr. McDonough: Objected to for the same reasons as heretofore urged.

The Court: Overruled.

Mr. McDonough: Exception.

Said Exhibit E being in words and figures as follows:

172 "Ex. E, J. K. P.

Harrison & Lawrence.

New Orleans, La., Jan. 27th, 1917.

Bought From
Messrs. Harrison & Lawrence of New Orleans, La., and agreed to Receive from them subject to the By-Laws, Rules and Conditions of the
New Orleans Cotton Exchange
and subject to the United States Cotton Futures Act, Section 5.

| Bales | Cotton | Delivery | At Cents per Pound for Middling |
|---|---|---|---|
| One | Hundred | May | 17.06 |

(Signed) THORN & MAGINNIS"

Q. I hand you another slip dated January 29, 1917, and ask that it be marked Exhibit F to your testimony, and examine it and please state what it is?

A. It is a contract for 200 bales of cotton for July delivery bought on the New Orleans Cotton Exchange, one hundred bales at 17.10 and one hundred at 16.93.

Mr. McDonough: The [preliminaary] is to identify it and he is reading the whole thing into the record when he was asked what it was for the purpose of identification.

Mr. Going: I don't care about him telling what it is.

The Court: Very well. I don't understand, Mr. Thorn that you are called upon to give the contents. You are simply to identify it as a paper executed by you with somebody else, and then the contents will appear itself.

A. I meant to say there were two Mays—

The Court: I have just stated to you that the question does not intend, as I understand it, to ask you to read the contents.

Mr. Going: If you would just do this, say this is a contract executed on that date with those people for the purchase of cotton. That is all I want.

A. This a contract for cotton bought from H. D. Cothran & Company if New Orleans, La. by Thorn & Maginnis and signed by Mr. Kehoe.

173 Said Exhibit F being in words and figures as follows:

"Ex. F, J. K. P.

H. D. Cothran & Co.
219 Varieties Place.

New Orleans, La., Jan. 29, 1917.

Bought From

H. D. Cothran & Co., of New Orleans, La., and agreed to Receive from them subject to the By-Laws, Rules and Conditions of the

New Orleans Cotton Exchange

and subject to the United States Cotton Futures Act, Section 5.

| Bales Cotton | | Delivery | At Cents per Pound For Middling. |
|---|---|---|---|
| One | Hundred | July | 17.10 |
| One | " | July | 16.93 |
| One | " | May | 16.85 |
| One | " | May | 16.88 |

(signed) THORN & MAGINNIS."

(Duplicate)

Q. I hand you another slip dated January 29, 1917, and ask that it be marked Exhibit G to your testimony, examine it and please state what it is.

A. It is a contract for cotton bought from Pinckard & Kennedy of New Orleans, signed by Thorn & Maginnis by Mr. Kehoe.

Mr. Going: I offer this in evidence.

Mr. McDonough: Objected to for the same reason.

The Court: Overruled.

Mr. McDonough: Exception.

Said Exhibit G being in words and figures as follows:

"Ex. G, J. K. P.

Pinckard & Kennedy
New Orleans, La.

New Orleans, La., Jan. 29, 1917.

Bought From

Pinckard & Kennedy, of New Orleans, La., and agreed to Receive from them subject to the By-Laws, Rules and Conditions of the

New Orleans Cotton Exchange

and subject to the United States Cotton Futures Act, Section 5.

| Bales Cotton | | Delivery | At Cents Per Pound for Middling | Tax Value |
|---|---|---|---|---|
| Two | Hundred | May | 16.88 | |

(Duplicate) (signed) THORN & MAGINNIS".

Q. I now hand you an instrument of writing dated January 29, 1917, and ask that it be marked Exhibit H to your testimony, examine it and say what it is?

A. It is a contract of cotton bought from H. & B. Beer
174 of New Orleans, La. signed Thorn & Maginnis by Mr. Kehoe.

Mr. Going: We offer the exhibit in evidence.

Mr. McDonough: We object for the same reasons.

The Court: Overruled.

Mr. McDonough: Exception noted.

Said exhibit being in words and figures as follows:

"Ex. H, J. K. P.

New Orleans, La. 1/29/17.

Bought From

H. &. B. Beer, of New Orleans, La. and agreed to Receive from them subject to the By-laws, Rules and Conditions of the New Orleans Cotton Exchange and subject to the United States Cotton Futures Act, Section 5.

| Bales Cotton | Delivery | At Cents per Pound for Middling. |
|---|---|---|
| Three Hundred | May | 17.08 |
| One " | do | 17.07 |
| Three " | do | 17.08 |
| Two " | do | 17.00 |
| One " | Mch | 16.85 |

(signed) THORN & MAGINNIS."

Q. I hand you an instrument of writing dated January 30, 1917 and ask that it be marked Exhibit I, and state what it is?

A. It is a contract for cotton bought from Jno. F. Clark & Co. of New Orleans, La. by Thorn & Maginnis of New Orleans, signed by Mr. Kehoe.

Mr. Going: We offer it in evidence.

Mr. McDonough: Objected to.

The Court: Overruled.

Mr. McDonough: Exception.

Said exhibit I being in words and figures as follows:

"Ex. I, J. K. P.

Office of
Jno. F. Clark & Co.
824-826 Gravier Street

New Orleans, La., Jan. 30, 1917.

Bought From

Jno. F. Clark & Co., of New Orleans, La., and agreed to Receive from them subject to the By-Laws, Rules and Conditions of the New Orleans Cotton Exchange and subject to the United States Cotton Futures Act, Section 5, and amendments.

| Bales Cotton | Delivery | At Cts per Pound for Middling |
|---|---|---|
| two hundred | May | 16.93 |

(signed) THORN & MAGINNIS."

175 Q. I hand you an instrument of writing dated January 30, 1917 marked Exhibit J, and ask you to state what it is?

A. It is a contract for cotton bought from Shepard & Gluck of New Orleans, La. by Thorn & Maginnis of New Orleans, signed by Mr. Kehoe.

Mr. Going: I offer the contract in evidence.

Mr. McDonough: Objected to.

The Court: Overruled.

Mr. McDonough: Exception.

Said Exhibit J being in words and figures as follows:

"Ex. J, J. K. P.

New Orleans, La., Jan. 31, 1917.

Bought From

Shepard & Gluck, of New Orleans, La. and agreed to Receive from them subject to the By-Laws, Rules and Conditions ot the New Orleans Cotton Exchange and subject to the United States Cotton Futures Act, Section 5.

| Bales Cotton | | Delivery | At Cents per Pound For Middling |
|---|---|---|---|
| One | Hundred | Oct. | 16.00 |
| Two | " | May | 17.13 |

(signed) THORN & MAGINNIS".

Q. I hand you an instrument of writing dated January 31, 1917, and ask that it be marked Exhibit K to your testimony, examine it and state what it is?

A. Contract for cotton bought from Messrs. Felix Couturie & Co., of New Orleans by Thorn & Maginnis, New Orleans, and signed by Mr. Kehoe.

Mr. Going: I offer it in evidence.

Mr. McDonough: The same objection.

The Court: Overruled.

Mr. McDonough: Exception.

Said exhibit K being in words and figures as follows:

"Ex. K, J. K. P.

New Orleans, La., Jan. 31, 1917.

Bought From

Messrs. Felix Couturie & Co., of New Orleans, La. and
176 agreed to Receive from them subject to the By-Laws, Rules and Conditions of the New Orleans Cotton Exchange and subject to the United States Cotton Futures Act, Section 5.

| Bales | Cotton | Delivery | At Cents Per Pound For Middling |
|---|---|---|---|
| One | Hundred | May | 17.13 |
| One | " | do | 17.09 |

(signed) THORN & MAGINNIS".

Q. I hand you an instrument of writing dated February 1, 1917, marked Exhibit L and ask that you examine it and state what it is.

A. It is a contract for cotton sold to Messrs. Airey & Stouse of New Orleans by Thorn & Maginnis of New Orleans and signed by Mr. Kehoe.

Mr. Going: We offer the instrument in evidence.

Mr. McDonough: Objected to.

The Court: Overruled.

Mr. McDonough: Exception.

Said Exhibit L being in words and figures as follows:

"Ex. L, J. K. P.

Office of
Thorn & Maginnis
209 Varieties Place.

New Orleans, La., Feb. 1, 1917

Sold To

Mess. Airey & Stouse of New Orleans, La., and agreed to Deliver them subject to the By-Laws, Rules and Conditions of the New Orleans Cotton Exchange and subject to the United States Cotton Futures Act, Section 5.

| Bales Cotton | | Delivery | At Cents Per Pound For Middling. |
|---|---|---|---|
| twenty | Hundred | May | 14 cts |
| one | " | " | 14.20 |
| One | " | " | 14.25 |
| One | " | July | 16.10 |
| One | " | May | 14.45 |
| Three | " | July | 16.10 |
| One | " | do | 16.10 |
| One | " | May | 14.80 |
| One | " | " | 14.50 |

(Signed) THORN & MAGINNIS".

Q. You have sued this defendant for $23,215.00 money which you allege you paid out to other brokers for him and at his instance and request. What sum of money does he owe you?

A. He owes us twenty-three thousand, I don't know the exact figures,—two hundred and some odd dollars.

177 Q. The account will show?

A. The account will show.

Q. Has he ever paid any part of it?

A. Not a bit of it.

Q. Mr. Thorn, was it the custom generally for you as a member of the New Orleans Cotton Exchange in accepting a contract for any man for either the purchase or sale of cotton for future delivery believing at the time that he had no intention of either accepting or delivering the cotton bought or sold? A. No.

Q. Would your firm have done so? A. No.

Mr. McDonough: That is objected to, Your Honor.

The Court: On what ground do you claim that is competent, Mr. Going?

Mr. Going: If there is objection I will withdraw it.

Q. Mr. Thorn, was the cotton which Mr. Browne bought and for which you claim to have made a contract, was that delivered in May?

Mr. McDonough: That is objected to, Your Honor, as incompetent, irrelevant and immaterial and not authorized by the pleadings here. They do not allege that they delivered any cotton in May; they allege that they sold it out on the first day of February.

The Court: How do you claim that is competent?

Mr. Going: I am just asking the witness that question to show exactly why there wasn't any delivery to Browne. They say that is a gambling proposition because it wasn't delivered.

The Court: No, the reason that they claim, as I understand, that this is a gambling proposition was because it was
178 the intent at the time the contract was entered into that it was a gambling proposition.

Mr. Going: I will ask this question: I withdraw that to save time.

Q. What was your intention at the time you entered into contracts with these various brokers with reference to the circumstances of the cotton on behalf of Mr. Browne?

A. To make delivery of that cotton bought and to deliver the cotton that was sold.

Q. You then expected to spot the cotton that you had contracted to buy? A. We did.

Q. And to deliver the cotton you had sold? A. We did.

By Mr. Cravens:

Q. Did you Mr. Thorn, or anybody representing your firm, do anything that prevented the delivery, or prevented the fulfillment of these contracts by acts of delivery except carrying out the instructions of Mr. Browne the defendant?

A. We did not; they would have been received on contract if he had held them until maturity?

Q. That is May, you mean by maturity? A. Yes.

Cross-Examination

By Mr. McDonough:

Q. You are the senior member of the firm, were you?

A. Yes.

Q. I will ask you to look at this account which you attached to this complaint and see if that is the statement of account made out by your firm? A. Yes.

Q. Who made that out, do you know?

A. I can't be sure without looking again; somebody in
179 the office. No; we had a good many clerks there and I can't tell who made it.

Q. You were not acquainted with Mr. Browne before that date, September 22, 1916? A. No.

Q. Had no information at all about him? A. Yes.

Q. What was that information?

A. Commercial ratings and information out of the cotton shippers book.

Q. Where is the Commercial rating?

A. In Dunn's and Bradstreet's.

Q. The only book you have reference to is the book which you offer and which you called cotton shippers' book and under that you found Crowder, Pittsburg County, Okla. Fred Browne and J. L. Burba?

A. It is not the only book; I have just referred to two other books.

Q. Did you have any other source of information concerning Mr. Browne?

A. We had the commercial agencies.

Q. Did you look it up?

A. It was looked up in our office.

Q. Did you look it up?

A. No, I didn't; it wasn't my duty.

Q. Then you didn't look it up? A. No.

Q. I will ask you if this is a letter from your firm to Mr. Brown?

A. Yes, sir; that is a letter from our firm.

Q. Is that letter signed by you?

A. No, signed by Mr. Coleman.

Mr. McDonough: We offer that letter in evidence.

180 The Court: Let it be identified.

(Letter identified as Defendant's Ex. 1)

The Court: It will be received.

Said Exhibit 1 being in words and figures as follows:

"Deft. Ex. 1, J. K. P.

New Orleans, La. Sept. 22/16

Mr. Fred Brown,
Crowder, Okla.

Dear Sir:

We beg to acknowledge your telegram of even date containing order to Sell 200 May and now beg to confirm our advice of sale at 16.40, which we trust reached you promptly and proved satisfactory.

We now beg to enclose confirmation slip covering this sale and thank you for this initial order, which we assure you, is very much appreciated.

We also beg to acknowledge your deposit of $1000.00 in the Bank of Crowder, which amount we are to-day placing to the credit of your account and which you will note is acknowledged in the enclosed memo.

It affords us much pleasure to enter the name of your good self upon our books and we trust that this is but the beginning of a mutually satisfactory business relation. We shall take pleasure in wiring you from time to time, but in the event you wish anything special as regards the market, please do not hesitate to call upon us for same.

With kindest regards and again thanking you, we beg to remain—

Yours very truly,

SCC-CLB THORN & MAGINNIS."

Q. That was a sale of 200 May according to that letter. Did he own any before that?

A. I couldn't say off-hand.

Q. You say in the letter that this is the initial trade. That means the first trade, doesn't it?

A. The first trade that whoever wrote that letter knew about.

Q. Take the letter. If that is the initial trade, then did he own any cotton on your books before that?

A. I couldn't say.

Q. Will you say one way or the other?

A. I will not. I won't say anything that is not true.

Q. I just asked you whether or not that was the initial trade. You say you don't know?

A. That is what I said.

181 Q. Then you will not tell the court and jury that he owned cotton at the time he sold that 200?

A. I couldn't tell them.

Q. Your books will show?

A. I haven't them with me. Of course they will show.

Q. Where are your books? A. New Orleans.

Q. You knew you were coming up to try this law suit?

A. I certainly did.

Q. And you knew that the books were a complete transaction of every transaction that Fred Browne had made?

A. No doubt about the books being a complete record.

Q. Why didn't you bring them?

A. I wasn't asked to.

Q. That is the reason and the only reason is it?

A. I would have brought them if he had asked for them. If the court had requested it I would have brought them.

Q. Now that is the only reason, is it? That is three times I have asked you that and you haven't answered it yet?

A. I don't know of any other.

Q. Mr. Thorn, if he had owned cotton at that time, would not you have told him in the letter that that closed his transaction for the 200 May? A. Not necessarily.

Q. Would not you have sent him a statement of account?

A. We send statements on all business.

Q. Wouldn't you have sent him a statement of account if he had owned 200 May and was then selling out 200?

A. We would have.

Q. Did you send it? A. I don't know.

182 Q. Why don't you know? You have got a statement of your account beginning September 22, 1916. Now can you find anything on there where he had bought prior to [Spril] 22nd. If so, where is it? This letter says that he sold on September 22nd. Now where is any information on there that he bought prior to that time?

A. There doesn't have to be any indication that he bought prior to that.

Q. I don't ask you to argue the case. You have stated you did not know. I am asking you where is there any indication in this account that he bought 200 before September 22nd?

A. He may have sold it before he bought it; I don't know.

Q. I didn't ask you that. I am asking you for the fourth time where is there any indication on that account that he bought that cotton before September 22nd, or even on the date of September 22nd? In other words, is there any information on there that he bought the cotton before he sold it?

Mr. Cravens: May it please the Court, I think the statement shows for itself.

The Court: He may answer the question.

Q. I am asking you to read the language of your account. I am trying to get at the facts as you know them. I have asked you five times— A. The statement speaks for itself.

The Court: Well, I don't believe that that is a sufficient answer. The question is if there is anything on that statement that would indicate a purchase of the 200 bales referred to in the letter, the letter as I understand it, reporting a sale.

The Witness: The letter reports a sale; not a purchase.

183 The Court: Now the question is, is there anything in the statement which shows a purchase of that 200 bales?

A. I don't know.

Mr. Cravens: Mr. Thorn, can't you take that statement and answer that question?

A. I don't understand the question. I can't understand the question. That is the reason I can't answer it.

The Court: You may proceed.

By Mr. McDonough:

Q. Now Mr. Thorn, your last response was that you didn't understand the question. Your first response was that you did not know. Now you have since then talked with your attorney, have you not? A. Yes.

Q. Now I want to ask you again if you can, since you state you did not understand the question, I want to make it clear to you and give you a chance to answer it, and I want to restate it. Now you have in the letter referred to, stated that you had his order to sell 200 May. That means the sale of 200 bales of cotton for May delivery, does it not?

A. That is what it means.

Q. The question now is whether there is anything in the statement of account attached to your complaint in this case which shows that he had prior to that time bought the 200 May? A. He said sold 200.

Q. Don't you understand the question?

A. I think if you could show me the original slip that was sent by us,—this might have been an error; it might have been a buy instead of a sale. If you have got the original slip I might be able to tell you.

184 Q. You mean by that suggestion that your letter might report a purchase instead of a sale?

A. Might be.
Q. Do you find anything on that statement of account that shows that you purchased for him on that day?

The Court: Is there anything?

A. I don't see it.
Q. And nothing that shows a purchase prior to that date?
A. I couldn't say; I don't see it.
Q. Do you have any recollection of a purchase prior to that sale of 200 for May delivery?
A. Any recollection of a purchase?
Q. Yes, sir; prior to that sale?
A. I don't recall any now.
Q. When was that 200 bought? A. Which 200?
Q. The 200 referred to in that letter?
A. It says "Sold".
Q. I said when was it bought?
A. The letter says sold.

The Court: Just answer the question.

Q. When was it bought, if you know?
A. It doesn't appear to be bought, Your Honor.

The Court: Very well; that is an answer.

Q. If he sold it wouldn't he afterwards buy it back?
A. Not necessarily. He might deliver the cotton on track.
Q. Did he deliver it? A. He did not.
Q. There wasn't a bale delivered?
A. He would have been called on to deliver the cotton
185 if he had held it to maturity.
Q. Don't argue the question. There wasn't a bale?
A. No.
Q. You heard your partner swear in that deposition that not a bale was delivered? A. That is correct.
Q. Then why don't you answer the question instead of giving something else? A. I have answered it.

The Court: Proceed with the examination.

Q. Do you pretend to say to this court that that 200 bales referred to in that letter which was sold, was never afterwards bought to cover? A. I think it must have been.
Q. But you stated he might have delivered it? Did you mean that? A. I said he could not.
Q. Then if you knew he didn't deliver it, don't you know that he bought it to cover?
A. It don't say cover in that letter.

Q. If you know that he didn't deliver it and you knew that he sold it, don't you know that he bought it to cover later on?
A. I couldn't say that I know it; I believe it though.
Q. You stated the other though, just a while ago? You stated you knew he never delivered it?
A. I know that, yes.
[A.] And the account is closed, isn't it? A. It is.
Q. Don't you know from that that there was 200 bales bought by him to cover that sale?
A. I know that two hundred bales were bought to deliver.
186 Q. Did he win or lose on that 200?
A. I haven't the books before me; I don't know about that.
Q. And you left the books in the office?
A. In the office.
Q. If he did buy 200 to cover that 200 sold, how would you find out what amount was due you on that transaction?
A. By referring to the books.
Q. When you got to the books would you find out?
A. Find out whether we owed him anything or whether he owed us anything?
Q. How would you estimate it? Does the price have anything to do with it? A. Yes.
Q. Just explain what it does have to do with it.
A. I would have to have what price he bought back at before I could tell what he owed.
Q. I am not asking you to be exact. Suppose he bought back at a price higher, would he win or lose?
A. I wouldn't put it that way.
Q. If he bought it at a price higher than he sold he would lose. Suppose he bought it at a lower price?
A. Then he would make.
Q. Then when a man sells, when he hasn't already got, what does he expect the market to do?
A. It is not for me to say what he expects it to do.

Mr. Cravens: I think that is going into the realm of conjecture; looking into the mind of a man who is a prospective buyer and of no relevance of materiality to the issues here.

Mr. McDonough: He is the principal party to the case and it seems to me that on cross-examination the latitude is wide.

187 The Court: I think the objection is good. I think the only way you can elicit the information that I suppose

you are seeking, is to have the witness explain, if he knows, what effect will be had if he sells at a less price, or he sells for a greater price. What the purchaser expects to do is in inference for the jury to draw.

Mr. Cravens: And he has just gotten through, may it please the court, explaining this other question.

Mr. McDonough: When it is a question of intention all the authorities that I have examined leave a very wide latitude on cross-examination. It is like proving a conspiracy.

The Court: You have got to prove something to prove a conspiracy, and you can prove here what would be the result if certain things occurred, and what would result when certain other things occurred, and then the jury will draw the inference as to what the man expected from that transaction from the ordinary observation of business transactions.

Mr. McDonough: All right, I save an exception and will go ahead. I want to ask him this question.

Mr. Oglesby: Just a moment. If this is an inference for the jury to draw, we want to ask the Court to exclude that remark from the jury, because a man can sell what he has not got.

Mr. McDonough: I didn't say anything about the jury. I said what the intention was was a question for the jury. You evidently did not get what I said.

Q. You have no recollection, as I understand you, of this order personally?

A. Without referring to the books, no.

Q. And you have no way then, to say that you are sur-
188 prised at getting an order to sell—were you surprised to get an order from a man to sell when he didn't have any cotton on your books?

A. No, he might have been hedging cotton he held in the country. He feared the market was going down and he wanted to sell his cotton. The railroads might have been tied up and he saw the market going down and he wanted to protect himself, so he sells 200 bales to protect the cotton he holds in the country.

Q. That was your inference, it might have been so?

A. None whatever.

Q. Then why did you say it might have been?

A. It might have been a great many things.

Q. Name some of the things that it might have been?

A. He might have been accumulating cotton and concentrating it to ship to Liverpool. He might have been buying a hundred bales here and 200 bales there until he got a sufficient amount to ship. Now he couldn't take the chances of a market fluctuation up to the time that he got ready to ship an order say, of 2000 bales. He had to protect himself in the meantime, and that is what the future market is for, to allow that protection to a man who doesn't want to take a chance. That is the original purpose of the big exchanges of the world. It is to offer protection in the way of commercial insurance to those buyers and sellers and shippers of cotton, who don't wish to take the opportunity—or at least, don't wish to take the risk. It also affords a man with a smaller amount of capital the way to handle a very much larger volume of business than he would be able to handle without the future exchanges.

Q. Is that all? A. No.

Q. Go on and finish your answer.

A. It also serves as a world's market where everybody
189 who wishes to [by] and sell can come to that market and buy or sell, as the case may be, and allows a great many smaller people who would not be buyers in a large way, to buy a larger amount of cotton than they ordinarily could with their capital because they can get this commercial insurance, which is very little if any more than the cost of the insurance that you carry on your house. It allows a man who wishes an opportunity of making a trade today to take advantage of it whereas without the future business he could not have put through that transaction without taking too big a hazard. I think that answers it.

Q. Let me see if I understand you. Your theory is in that respect that Browne had probably bought at his home or somewhere about here, and had on hand 200 bales of cotton and fearing that the price might go down and cause him a loss on that 200 bales of cotton, he would then sell 200 bales in futures and therefore, his profits would be settled then and there, and thus he would save himself loss because what he lost on spots which he had up here, he would make on futures down there?

A. Without hedging his cotton probably he would.

Q. That is what you mean, is it? A. Yes.

Q. Then in order to enable him to make on spots, he draws on the future market and protects his price on the rise and fall of the future, in order to save him money on the spots, does he? A. That question is not clear.

Q. You don't understand it? Is that what you mean?

A. That is what I mean.

Q. You have stated that you assumed that Fred Browne was selling futures—

A. I didn't say I assumed anything.

190 Q. Then you have stated that Fred Browne might be selling futures to hedge against spots which he owned?

A. He might have been.

Q. Then if he did that, would it not be true that the purpose of it was to save in the fall of price on futures what he would lose on spots? Now to make it clear, suppose he had, —or might have had as you said, might have had at Crowder, or at Fort Smith 200 bales spot cotton. He owned it; it was his?

A. Yes.

Q. And suppose he did not want to sell, of course, if cotton went down he would lose money on that, wouldn't he?

A. He would.

Q. And suppose he had a profit in it at that time—

A. In what?

Q. In the spots. Now then, instead of selling the spots right then, in order to fix his profit in it, and save it, he sells futures 200 and thereby makes on the rise and fall of price in futures, what he would lose on the rise and fall on the spots?

A. That is correct.

Q. Then for the purpose of preventing loss on spots he speculates on the price in futures, doesn't he?

A. No.

Q. Do you say that if he sells 200 futures with the expectation of the price going down, to save loss on spots, that he isn't speculating?

A. I do say so.

Q. That he is not speculating on the fall of the price in futures? Is that your answer?

A. I say that he hedges cotton; he is not speculating. That is the way to keep from speculating.

191 Q. You mean it is the way to speculate on spots?

A. We are talking about spots, are we not?

Q. We are talking about both spots and futures.

A. We were talking about spots first.

Q. Do you say that the man, under those circumstances, who sells the futures, 200 bales, does not sell it with the expectation that if it goes down he will buy it back and make a profit on the fall in price?

A. It is not for me to say what he expects.

Q. I am not asking you that. I am asking you what his purpose was when he did it?

A. If a man had 200 bales in the country and he sold 200 bales in New Orleans against it, it would be my inference that he was hedging those 200 bales.

Q. And wouldn't it be your inference that he was expecting to make on the futures, if it went down?

A. He would make on futures what he lost on spots.

Q. Then he is speculating on spots here?

A. I don't call it speculating; hedging.

Q. What do you mean by hedging?

A. If you have 200 bales of spot cotton that you have grown on your farm and you can't get it to market and you are satisfied with the market today, do you mean to tell me you are not at liberty to hedge that cotton? I contend that you are.

Q. Get back to the question. If a man sells 200 bales of cotton with the expectation of the price going down and that he will close it out by buying back, whether he is expecting to make money on the fall of futures. Is he hedging cotton?

The Court: I don't think, Mr. McDonough, that you have a right to limit the witness. He makes a distinction be-
192 tween hedging and other future buying. Now if you are interrogating him, then you must take it from his standpoint and giving the distinction he does make between future buying, which he calls hedging, and future buying which he does not call hedging. I understand that is his statement?

The Witness: Correct, sir.

Q. If the man is not hedging, and if he sells 200 bales, not having it, with the expectation of buying it back when it is lower, is he not selling it for the purpose of making profit on the fall of the price in cotton?

A. If he does that thing, yes.

Q. Then your idea would be, if Mr. Browne had 200 bales of cotton it would be a legitimate transaction for him to sell 200 bales on the Cotton Exchange?

A. I would consider it so.

Q. If he did not have, it would not be a legitimate transaction?

A. I would not say that.

Q. Do you know how many thousands of men that you have, thousands of customers, or do you have hundreds of customers? How many do you have over the country?

A. I couldn't say.

Q. Could you give any idea as to the number of customers you have?

A. No.
Q. Have you got any idea as to the number of customers you have?
A. No.
Q. Have you got one or one hundred?
A. I should say nearer a hundred than one.
Q. Is it your best judgment as head of that firm, and
193 the manager of that business, that you can only approximate in that way, the number of customers that your business had all over the country?
A. It fluctuates from time to time; I don't know how many we had.
Q. I didn't ask you the exact number.
A. I say the number of customers that we had on our books changes.
Q. I am asking you to give your best judgment of the number of customers that you now have?
A. Our firm is not in existence now.
Q. Were you in existence in 1916? A. Surely.
Q. Were you in existence in 1917?
A. Yes. I have just told you that I was uncertain—
[—]
A. I am answering you by saying that I have never counted the number of customers.
Q. Then you state to this court and jury that you are unable to give any kind of estimate of the number of customers you had in 1916 or 1917?
A. I didn't say that.
Q. Then give it.
A. It would be a vague estimate.
Q. Let it be vague.
A. I should say a hundred or so.
Q. What do you mean?
A. It may run a hundred, a hundred and fifty, or maybe run only to 75.
Q. Were you personally acquainted with any of them?
A. A few of them.
Q. Most of them?
194 A. I don't know. I knew a great many of them.
Q. In this cotton book is the name of Mr. Burba, did you know him?
A. He did business with us.
Q. Did you know him?
A. I don't recall having met him.
Q. Have you seen him here?
A. I don't recall it.

Q. You have no recollection of his being at your place of business at New Orleans?
A. At the moment I don't recall it.
Q. Did you have a man traveling in Oklahoma in 1916 or at any time thereabouts, soliciting business for you?
A. I don't recall.
Q. Did you have them traveling anywhere?
A. Occasionally I would take a trip, or Mr. Coleman.

The Court: I think that is in answer to his question.

A. I don't recall any right now; may have had one.
Q. Do you know the name of a man that you had in Oklahoma, if you had one?
A. I think if you would tell me the name, then I would know.
Q. Can you tell the name of the man in Oklahoma that traveled for you and represented you in that state?
A. I can't right now.
Q. Now then, I want to ask you what the next item on your account, on the credit side of it, is?
A. October 4th, By Cash, $200.00.
Q. Is that cash you got from Mr. Browne?
A. It is a credit.
Q. Is that cash you got from him?
A. I can't tell by looking at that whether it is cash.
195 Q. By cash would you mean that he had been credited with that amount? Does that mean that you received $200.00?
A. It says "By cash" and I assume it is.
Q. Then your best judgment is that it is cash?
A. That is what it says.
Q. Is that your best judgment?
A. From looking at that, it would be.
Q. 800, that says cash. Was that profit on cotton?
A. It doesn't say so.
Q. How about the four hundred?
A. It doesn't say so.
Q. If it was profit on cotton it would not say cash?
A. Hardly.
Q. Now the next one is four January, $340. How did he get profit on that?
A. He bought and sold that cotton and got a profit when he closed out.
Q. How do you know that he bought and sold?
A. That is a credit there.
Q. Did he buy first or sell first?
A. I don't know. I haven't got the books here.

Q. That is a credit, isn't it?

A. That is a credit arising from the purchase and sale of 400 January.

Q. Then whether he bought it first or sold it first, you don't know?

A. I don't.

Q. How many points was that?

A. Five dollars a point; you can figure it yourself.

Q. Can't you figure it?

A. It has got $340.00.

196 Q. That would mean what difference in the price of cotton?

A. There may have been some spots attached to that transaction.

Q. Assuming there were no spots what difference would it make in the price of cotton?

A. I can't say offhand.

Q. Did that refer to the first two hundred, the initial two hundred?

A. That I don't know.

D. Did that $340.00 profit from that four January indicate that he bought it first and then sold it back?

A. I told you I couldn't tell you without looking at the books.

Q. Did that—

A. It would seem to indicate that was a round trade by buying.

Q. Was that the difference in the price at which he sold it, or bought it, or the price at which he bought it or sold it, that $340.00?

A. Are you asking whether he bought it first, or sold it first?

Q. No. I didn't ask you that. If you will just listen.

Read the question. (Question read)

A. You mean as to whether you bought it first, or sold it first? I don't understand the question.

The Court: Let me see if I can put it. I understand the question to be this, Mr. Thorn. If that was the result either of a purchase and subsequent sale, or a sale and a subsequent purchase; either one or the other of those?

A. I should say it was, one or the other.

By Mr. McDonough:

Q. Mr. Thorn, I want to go back to one thing. I believe you stated that you found Mr. Browne in Bradstreet's?

A. I didn't say that I found him personally, I don't think. I said he was looked up in Bradstreet's and
197 Dunn's in our office.

Q. You got the information then, from somebody in your office that Mr. Fred Browne in 1916 was reported in Bradstreet's Commercial agency? A. Dunn's I think.

Q. And Bradstreet's?

A. One of the two. It is my understanding that he was quoted in one or two.

Q. That was your understanding from your partners?

A. Yes.

Q. That he was reported in Dunn's Commercial Agency or Bradstreet's in 1916?

A. I didn't say the date. It may have been an old book or of a recent issue.

Q. You mean by that it may have been in there in 1919?

A. It may have been in there in 1919; I don't know.

Q. I am not talking about what might have been now. I am trying to find out what you mean to tell this court and jury about the report of this man in a commercial agency. Do you mean to say that you found his name in 1919?

A. I have not looked.

Q. Did you look in 1918? A. I did not.

Q. Did you look in 1917?

A. I did not personally. I am under the impression that he was looked up about that time.

Q. Who looked him up?

A. He may have been looked up by Mr. Coleman or Mr. Kehoe; probably Mr. Kehoe did.

Q. Was it Mr. Kehoe's business?

A. As a general proposition he would look up and tell
198 me about the finances.

Q. You just stated a while ago that you looked after the finances of your concern?

A. I didn't say entirely. Mr. Kehoe was head of the office; I was more of an outside man.

Q. You now modify your former statement by saying now that you didn't [looked] after the financial end entirely?

A. Not entirely; generally speaking I did.

Q. Now then when you said while ago that you were head of that concern you didn't mean by that that you were higher than Mr. Kehoe.

A. Yes, I meant that I was higher in authority than Mr. Kehoe.

Q. Then was it your best impression that Mr. Kehoe looked up the finanical rating of Mr. Browne in 1916?

A. About that time.

Q. It might have been before that [of] after that?

A. I believe he did look it up.

Q. He looked him up before February 1, 1917?

A. I think we undoubtedly looked him up then, but I think we looked him up before.

Q. You stated rather positively that some member of your firm looked him up? A. Yes.

Q. You stated you thought it was Mr. Kehoe? A. Yes.

Q. I want you to state just when it was that Mr. Kehoe reported that he looked him up and found him? Before or after this initial letter? A. Probably after.

Q. Did you sell this 200 for him on the information
199 that you got from the commercial agency?

A. Not entirely.

Q. Did you sell it to any extent on that?

A. That might have had some influence.

Q. I am not asking you what may have had; I am asking you if it did? A. The fact that he advanced—

Q. I am not asking you to argue the case. I am asking you if you did it? If you sold that initial order in any degree upon the information which you had gotten as to his commercial rating in the Commercial Agency?

A. I had it at that time.

Q. Then why did you bring in commercial ratings a while ago?

A. Because we always use them whenever we can; whenever anybody is listed there.

Q. But why should you refer to it when you now doubt that the credit he had in the Commercial agency had anything to do with it.

A. It wasn't entirely his credit; he had put up a margin also.

Mr. Cravens: I think the attorney ought to ask Mr. Thorn the question and not stand up here and argue the case continually.

Mr. McDonough: Your Honor, I don't desire to argue with him but if he has ever answered a question straight and square I have not heard it.

The Court: Proceed with the examination.

Q. Now Mr. Thorn, you have made two statements, as I understand it. I want to call your attention to that part when you said you doubted that you sold him at all on his commercial rating on the first transaction. You have also said you

didn't sell him entirely, as I consider it, you mean that you did sell him partly on his credit rating?

200 Mr. Cravens: He said he doubted that the commercial rating had anything to do with it.

Q. You made the two statements that I called your attention to. What do you mean by them?

A. I mean the chances are when we executed his first order, we hadn't gone as thoroughly into his financial standing as when we carried a larger amount of cotton for him, as we did later on. That is what I meant to convey.

Q. The chances are that was the situation? That is what you say? A. I should say so.

Q. You have no recollection of it of your own?

A. I may have been out of town at the particular time.

Q. If you were out of town you know nothing about it?

A. Yes.

Q. Hence you don't know whether you have any information on it at all? A. Not on the first transaction.

Q. Then you don't know whether he was sold on his credit or on the deposit—

Mr. Cravens: Your Honor, he has answered that.

Q. Is it not true that you sold that 200 bales solely on the strength of that thousand dollars that he put up?

A. I think it had more to do with it at that time, that particular transaction.

Q. You have never called on Mr. Browne for any commercial statement showing his rating? A. No.

Q. The amount of deposit required for dealing in futures was five dollars a bale?

A. That depends on the firm that was doing the trading.

201 Q. What was it with your firm?

A. It was about that.

Q. What was cotton worth at that time?

A. About sixteen cents.

Q. How much a bale? $80.00 a bale? A. About that.

Q. Then five dollars a bale margin would enable anybody to carry the cotton? A. I wouldn't say anybody.

Q. Mr. Thorn, isn't it true that whenever any man put up with you your requirements as to margins, you carried his cotton? A. No.

Q. You did that with Mr. Burba?

A. We did business for Mr. Burba.

Q. Carried the cotton for him? A. Yes, sir.
Q. And he never took a bale of it?

Mr. Cravens: That is objected to.

The Court: On what ground do you claim that is competent?

Mr. McDonough: On the ground that he called attention to this book in which his name appears and on the ground that he never received a bale and that he never intended to deliver a bale, and that he dealt with these very people.

Mr. Cravens: This book was excluded.

We didn't offer anything in here except the fact that the defendant Fred Browne's name was in this book of cotton shippers.

The Court: Mr. Thorn has admitted that Mr. Burba was a customer, so it don't make any difference how the
202 thought came to Mr. McDonough. He has answered the question that he was a customer. Now with reference to his dealings so far as Mr. Burba is concerned, I think that is competent.

Mr. Cravens: We want to object on this ground, that the number of his dealings with Mr. Burba does not afford any light on the business of Thorn & Maginnis with this defendant, Mr. Browne, in this case.

The Court: Objection is overruled.

Mr. Cravens: The plaintiffs except.

Q. And he never took a bale of it?

Mr. Cravens: We object.

The Court: He may answer.

A. Not that I ever knew of.
Q. Coming to the next item in this account dated January 19th, 5 January, $1945.00. What is the meaning of that entry?
A. I should say that is the profit on buying and selling, or selling and buying 500 bales of January and the profit amounted to $1945.00.
Q. The price then went up or went down? A. Yes.
Q. If he sold first the price went up? A. Yes.
Q. If he bought first the price went down? A. Yes.
Q. And that represents the difference between the two?

A. I should say that is what it was.
Q. Who made that entry on your books?
A. Well, it was made by several different parties.
Q. Did you authorize it to be made?
A. I don't remember the particular contract; I couldn't say, whether I had or had not.
203 Q. Did you know that Mr. Browne had his name on your books? A. Yes.
Q. Did you know that he was making all these deals in cotton? A. Yes.
Q. Did you know that he was buying or selling almost every day? A. Yes.
Q. You generally knew that? A. Yes.
Q. You had full knowledge of it? A. Yes.
Q. You knew where he lived? A. Yes.
Q. Did you know his business? A. Yes.
Q. What was it?
A. General mercantile business and cotton business.
Q. Did you know he had a store? A. Yes.
Q. Had a store at that time? A. Yes.
Q. How did you know it?
A. I was told so. I think he was rated as a general merchant.
Q. By whom?
A. That was the information secured in the office.
Q. Who was it? A. I think it was Mr. Kehoe.
Q. Is that the same information you were referring to a while ago from the commercial ratings? A. Surely.
Q. That shows then that Mr. Browne made a profit of $1945.00 between the price at which he bought 500 bales,
204 or the price at which he sold it, and the price which he bought it?
A. I have answered the question, but I don't know whether he bought first or sold first. I don't without looking up the books.
Q. Why didn't you look up the books when you knew you were coming up here?
A. Didn't think it was necessary.
Q. You had made your statement?
A. That was made by some body else. That is, the man that made that said it was correct.
Q. Who is that?
A. It was either Joe Villars or Leverich.
Q. Do you mean to say that he said whether or not that was purchased first and sold afterwards, or sold first and purchased afterwards? A. No.

Q. Nothing of that kind in this?
A. If he will submit the original slips it will show it.
Q. Do you know what the price was on October 19th?
A. No.
Q. Do you know what it was on September 22nd?
A. What year?
Q. 1916? A. No, I don't know.
Q. Well, then, what do you want to know the year for?

The Court: Proceed with the examination.

A. I might have known.
Q. October 4th, 1916, what was the price of cotton on the New Orleans Cotton Exchange?
A. I don't know; the records will show.
Q. October 5th? A. I don't know.
205 Q. October 11th? A. I don't know.
Q. October 24th? A. I don't know.
Q. October 26th? A. I don't know.
Q. If Mr. Browne, through you sold or bought 500 bales of cotton for January delivery on the 24th day of October and made a profit of $2130.00, what price did he buy or sell it for on that date? A. The books will show that.
Q. I am asking you if you know? A. I don't know.
Q. You knew that the books showed it? A. Yes.
Q. And you know whether they showed the date when it was purchased and sold and the date when sold and purchased?
A. The books will show that. I didn't make the statement.
Q. And so you didn't look it up to see?
A. The man who made up the statement testified they are correct.
Q. Then you haven't looked at that? A. No, I haven't.
Q. Then you don't know whether they are correct?
A. I don't know.
Q. You don't know how many points cotton went up or went down that enabled him to make $2130.00 on that cotton?
A. I know that it is five dollars around and you can divide it up and find out.
Q. But you stated a while ago that there might have been some expense. A. Yes, sir.
Q. The next item is October 25th 500 December, that means 500 bales December delivery?
A. December delivery; that is right.
206 Q. And he made a profit of how much as shown by your account? A. $3,025.00.

Q. And that represented the difference between the price at which he bought and sold it, or at which he sold and bought it, did it? A. Yes.

Q. It either went up or down? A. Yes.

Q. November 10th, 6 January, 1160 dollars. That is what that means, is it? A. Yes.

Q. He made a profit of $1160.00? A. Yes.

Q. Made in the same way? A. Yes.

Q. By the rise and fall in the price? A. Yes.

Q. November 10th, 2 May, 2170. I wish you would divide that out. A. Five into that will show.

Q. Divide five into 2170? A. Yes.

Q. $2170.00 is the amount. That makes 435. What does that represent? A. 435 points.

Q. What does that mean? A. Five dollars a point.

Q. Well, you say 435 points—

A. If your figures are correct.

Q. Well, you look and see if they are? A. 434 is right.

Q. You say that is 434 points. What I want to under-
207 stand is what do you mean by 434 points?

The Court: What is a point in cotton parlance?

A. A point in cotton parlance is a one-point fluctuation on one hundred bales. It is one-hundredth of one cent.

Q. Now here is a problem and you solved it. $2170, 200 bales of cotton. That indicated how much fall or rise?

A. 434 points. That number of hundredth cents.

The Court: One point is a hundredth part of a cent?

A. Yes, sir.

Q. That would be a fluctuation of 4.34 cents.

A. I thought you were talking about 500 bales. It would be one half of that then.

Q. That would be 217 points. Then that means 2.17 cents fluctuation in the price of cotton?

A. If your figures are correct, yes.

Q. See if they are correct? A. That seems to be correct.

Q. Then do I understand from that, that Mr. Browne, if he first bought, bought at 2.17 cents less than he sold at on November 10th in order to make that $2170.00? A. Yes.

Q. Now the next item, and Mr. Thorn, we will shorten it. You can estimate the rise and fall in the price of every hundred bales the same way, on this account can you? A. Yes.

Q. Take for illustration say, 2 March, November 17th, 2 March, $710.00. Divide that by two and that would show the number of points—I mean divide that by 5 and it would show

the number of bales, and then divide by 2 to show the points on 100 bales? A. Yes.

208 Q. And that would show the number of cents that he bought, being a hundred points to one cent? A. Yes.

Q. Then what is the next item? I want to ask you what the next item is after the $710.00, 2 March?

A. Four January.

Q. That is 400 bales of January cotton on which he made how much? A. $410.00.

Q. What is the date of the next one?

A. November 21st, 4 January $820.00.

Q. The next is 2 March, $390.00, and then on December 5th, how much was dealt in? A. Fifteen hundred bales.

Q. Was that bought or sold?

A. I couldn't tell without looking at the books.

Q. What profit did he make on it? A. $255.00.

Q. It was a very narrow profit?

A. It was a question of judgment.

Q. The next is 2 January? A. Yes.

Q. And the next is 4 March? A. Yes.

Q. And then follows a lot of cash items. Those represent items of cash forwarded to you at New Orleans, or deposited in the bank and transferred to you?

A. I think that is more nearly correct.

Q. Then wherever it is shown May, or whatever it may be, that means bales of cotton bought or sold?

A. No, it means contracts of a hundred bales.

209 Q. It means either a purchase or a sale? A. Oh, yes.

Q. And the price is shown, as you have heretofore explained it? A. Yes.

Q. Then you have as late as January 25th, Cash $2,000.00. Don't you recall your correspondence in which he wired you that he had deposited two thousand in the City National Bank?

A. I don't recall at the moment.

Q. Let's look at the list. The first is 5000. That means he has drawn that much cash? A. Drawn down.

Q. The next is July? A. That means he lost that much.

Q. And you find the rise and fall the same way as you did on the other side? You would get the various items in the list as shown on your account? A. Yes.

Q. The last one being on February 1, 2000 bales, 29?

A. Yes.

Q. Now in your complaint you refer to 2,000 bales of cotton referring to the purchases as between January 25, 1917 and January 31, 1917, and then you set out the price. Have

you figured the number of points that he lost by reason of the fall in price of cotton? A. I haven't figured it.

Q. I ask you what this is that I show you dated December 9, 1916?

A. That looks like an account sales from Thorn & Maginnis.

Q. It so states at the top?

A. I don't know whether it is correct.

210 Q. Look at Exhibit 2 and say whether it is correct?

A. It looks to be.

Q. You are unable to say then whether it is or not?

A. It looks like it.

Q. Do you recognize the handwriting? A. No, I don't.

Q. You are unable to tell us then whether it is sent out from your office or not?

A. I couldn't be positive about it.

Q. Is that your letter head or bill head? A. Yes.

Q. It is on one of your bill heads; you are sure about that, or are you in doubt? A. No, I am sure about that.

Q. Was anybody authorized to send them out except in the usual way from your office? A. Nobody.

Q. Still you are unable to identify it.

Mr. Cravens: Your Honor, he says it is.

Q. I show you exhibit No. 3 and ask you whether or not that is a statement sent to Mr. Fred Browne from your office?

A. It looks like a statement sent from our office under date of January 10th.

Q. I asked you whether it was a statement sent out?

A. I should say it was.

Mr. McDonough: I offer them in testimony.

Mr. Oglesby: We have no objection.

Said Exhibits being in words and figures as follows:

211 "Dft. Ex. 2, J. K. P.

Account Current. New Orleans, Dec. 19, 1916.

Mr. Fred Browne, Crowder, Okla.

In Account With Thorn & Maginnis,

209 Varieties Place.

| 1916 | | Dr. | 1916 | | Cr. |
|---|---|---|---|---|---|
| Oct 26 | To Cash | 5,000. | Sept 22 | By Cash | 1,000. |
| " 31 | " 4 July | 380. | Oct. 4 | " " | 200. |
| Nov. 10 | " 4 Jan | 435. | " 5 | " " | 800. |
| " " | " 2 May | 3,010. | " 11 | " " | 400. |
| " 13 | " Cash | 3,000. | " " | " 4 Jan | 340. |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Nov. | 25 | To 3 Mch | 1,020. | " | 19 | " 5 Jan | 1,945. |
| " | 27 | " 4 Jan | 260. | " | 24 | " 5 " | 2,130. |
| " | 28 | " 4 Jan | 760. | " | 25 | " 5 Dec | 3,025. |
| Dec | 1 | " 8 Jan | 520. | Nov | 10 | " 6 Jan | 1,160. |
| " | 2 | " 4 " | 260. | " | 10 | " 2 May | 2,170. |
| " | 6 | " 2 " | 130. | " | 17 | " 2 Mch | 710. |
| " | 8 | " 2 " | 465. | " | 17 | " 4 Jan | 810. |
| " | 11 | " 8 Mch | 700. | " | 21 | " 4 Jan | 820. |
| " | 13 | " 4 May | 360. | " | 24 | " 2 Mch | 390. |
| " | " | " 7 Mch | 990. | Dec. | 5 | " 15 " | 255. |
| " | " | " 4 Jan | 360. | " | 7 | " 2 Jan | 110. |
| " | 19 | " 4 Mch | 1,910. | " | 8 | " 4 Mch | 1,180. |
| | | Balance | 2,885. | " | 11 | " Cash | 1,500. |
| | | | | " | 16 | " Cash | 1,000. |
| | | | | " | 18 | " " | 1,000. |
| | | | | " | 19 | " " | 1,500. |
| | | | 22,445. | | | | 22,445. |
| | | | | | | Balance | 2,885. |

E. & O. E."

"Deft. Ex. 3, J. K. P.

Account Current

New Orleans, Jan. 10 1917.

Mr. Fred Browne, Crowder, Okla.

In Account With Thorn & Maginnis,

209 Varieties Place.

| 1916 | | Dr. | 1916 | | Cr. |
|---|---|---|---|---|---|
| Dec | 21 To 8 Mch | 4,055. | Dec. | 19 By Balance | 2,885. |
| " | 26 " 5 May | 170. | " | 20 " Cash | 1,200. |
| " | 28 " 7 May | 605. | " | 22 " " | 1,000. |
| " | 29 " 6 " | 530. | " | " " 2 Mch | 20. |
| 1917 | | | | | |
| Jan | 10 " 5 July | 25. | " | 26 " 2 Mch | 315. |
| | Balance | 9,165. | " | 28 " Cash | 1,500. |
| | | | 1917 | | |
| | | | Jan. | 3 " 2 May | 20. |
| | | | " | 6 " Cash | 2,000. |
| | | | " | 9 " 10 May | 3,320. |
| | | | " | 10 " 15 " | 625. |
| | | | " | " " 5 " | 100. |
| | | 14,550. | | | 14,550. |
| | | | | Balance | 9,165. |

E. & O. E."

Q. I will ask you to look at this paper and tell me what it is?
A. Confirmation of telegraphic correspondence it says.

Mr. McDonough: I offer it in testimony.

212 "Deft. Ex. 4.

Confirmation of
Telegraphic Correspondence
Exchanged Between Mr. Fred Browne, Crowder, Okla.
And Thorn & Maginnis,
209 Varieties Place,
New Orleans, Oct. 5/16.

Received

Buy two hundred N. Y. May buy four hundred N. O. Jan.

Sent

Kindly deposit two hundred dollars advise and have Bank wire.

Bot four Jan. N. O. 70
" two May N. Y. 44

Scattered liquidation checked advance.

We beg to confirm above telegrams sent you today.

Yours very truly,

(signed) THORN & MAGINNIS."

Q. Mr. Thorn I wish you would examine that and tell us what is the meaning of that telegram which says: "Buy two hundred N. Y. May buy four hundred N. O. Jan"?
A. That means buy 200 bales of May cotton in New York; N. Y. means New York; and buy 200 bales of cotton in New York May, and buy 400 bales in New Orleans January.
Q. Did you buy them?
A. Here is the counter telegram which would indicate that it was bought. It reads "Bought 4 January New Orleans at 70, and bought two May in New York at 44."
Q. Do you know whether those were ever sold or not?
A. The New York one?
Q. Both of them?
A. I should say that they were, by all means.
Q. I asked you to know whether you knew?
A. I haven't the books before me, but I should say that they were. All our books are closed out long since.
Q. Did he make a profit or loss on that?
A. I couldn't answer.
Q. Do you know how much the price went up or went down?

A. At what time?

213 Q. The time when it was held? The first transaction on that New York business was buy. That was on the bull side. Buy 200 New York; buy 400 New Orleans.

A. I don't know whether that is the initial transaction.

Q. They might have sold it before that? you think?

A. I don't think anything about it.

Q. What do you mean by what you said?

A. I mean to say I can't think. I don't know whether they were bought or sold first. He might have sold it before hand.

Q. I am asking you for that information?

A. I don't know.

Q. You don't know whether he made or lost, then?

A. Not on that transaction.

Q. And the only way to determine that would be to take your books and see how much cotton went up and went down?

A. Take our books and see what the contracts were closed at.

Q. And then you would determine how much it went up or went down? A. That is right.

Q. Your books will show what it cost? A. Yes.

Q. And your books show what it was sold at?

A. Yes, sir.

Q. And your books are in New Orleans? A. Yes, sir.

Q. I show you copies of letters and some other telegrams dated October 29, 1916, and ask you what those are?

A. It seems to be a confirmation of telegrams passed between us.

Mr. McDonough: I offer it in testimony.

"Dft. Ex. 5, J. K. P.

Confirmation Of Telegraphic Correspondence Exchanged Between Mr. Fred Browne, Crowder, Okla. and Thorn & Maginnis, 209 varieties place.

214 New Orleans, Oct. 9/16.

Sent.

Kindly deposit four hundred dollars advise and have bank wire.

Leland Line reported withdrawing Ocean rates; submarine activity depressing shipping, likely react on cotton.

No reply call. Insufficient margin carry over unless deposit must close.

We beg to confirm above telegrams sent you today.

As the market made quite a sharp advance after our last wire to you today, and thereby served to increase the margin in hand on your open contracts over night, we found our-

selves in a better position to carry your account over, which we did with the expectation that we would later hear from you in connection with our call sent earlier in the day.

You of course, can realize that in such erratic markets as we are having at present, that it is absolutely necessary, for the interest of both broker and customer, to have contracts well margined over night, and therefore trust that you will make every effort to let us have a prompt reply to our calls in the future.

Yours very truly,
(Signed) THORN & MAGINNIS.

CBT-CLB"

Q. What do you mean by "No reply call"?
A. Evidently a telegram had been sent asking for some money and no reply had been received.
Q. That is the meaning of "No reply call"? A. Yes.
Q. You did send him a telegram asking that he send some more money? A. It would seem so.
Q. And you told him you would close it out if he didn't put it up? A. Unless deposit was made.
Q. Unless deposit was put up you would close it out?
A. Unless the market went in his favor again?
Q. If it went up enough to have enough profit to protect him you wouldn't close him out? A. That is it.
Q. Then you depended, on what you did, as to whether you closed him out or not, on the rise and fall on the cotton exchange?
A. On the amount of protection that he had to his contracts.
Q. That is what you depended on?
A. The amount of protection that he had to his contracts.
215 Q. You still don't answer the question, and that is, whether or not if the rise in price was sufficient to give him sufficient profit by reason of the rise, if he was long you wouldn't close him out? A. That is right.
Q. And at the time this was sent the margin had been exhausted or was lower than you wanted to carry it?
A. I don't know the exact condition; but that would seem to be the condition.
Q. That is your understanding? A. Yes.
Q. That is what you meant to convey to him? A. Yes.
Q. We beg to confirm telegraphic correspondence sent to you today. As the market made quite a sharp advance after our last wire to you today, and thereby served to increase the margin in hand on your open contracts over night, we found

ourselves in a better position to carry your account over which we did with the expectation that we would later hear from you in connection with our call sent earlier in the day. You of course, can realize that in such erratic markets as we are having at present, that it is absolutely necessary, for the interest of both broker and customer, to have contracts well margined over night, and therefore trust that you will make every effort to let us have a prompt reply to our calls in the future. You wanted better margins in future?

[—]

Q. I show you a paper dated October 11, 1916 and ask you to state what that is?

A. Confirmation of telegraphic correspondence between Fred Browne and Thorn & Maginnis.

Mr. McDonough: I offer it in testimony.

"Dft. Ex. 6, J. K. P.

Confirmation of Telegraphic Correspondence Exchanged between Mr. Fred Browne, Crowder, Okla. and Thorn & Maginnis.

216 New Orleans, Oct. 11/16.

Received

Telegrams just received from Crowder have deposited your credit City National Bank here four hundred dollars.

Stop four hundred Jan. at ninety.

Sent.

Sold four Jan. at ninety on stop.

We beg to confirm above exchange of telegrams between us today.

Thanking you for this business and awaiting your further favors, we beg to remain,

Yours very truly,
(signed) THORN & MAGINNIS."

Q. Now I wish you would tell us what you meant by the telegram which you received, as I infer from the letter, reading "Stop four hundred January at ninety"?

Mr. Cravens: I don't think it is a proper question.

The Court: Why not.

Mr. Cravens: He asked him to explain what he means by a telegram he received?

The Court: He didn't mean that. He meant what did Mr. Brown mean.

A. I consider that to mean to sell 400 bales of January at 90 on stop.

Q. What do you mean by that?

A. To sell it when the market reached 90.

Q. Ninety cents?

A. Oh, no; that is a way of abbreviating when you send telegrams.

Q. What particular statement will show the price, 16.90 or 17.90 or 18.90? A. I don't know.

Q. Can you find it on your accounts that you have got here to show what it is? A. I don't know.

Q. Was that the same day that order was received? Did you get that order to stop loss on 400 the same day you got that order to buy or sell it?

A. I don't see anything on this telegram that tells.

217 Q. Stop 400 January at 90? A. Yes.

Q. Suppose he owned the cotton before?

A. He wanted to sell at 90.

Q. Suppose he had sold it before at 19.50 and he wanted to sell it at 18.90. Wouldn't that telegram authorize that sort of thing? A. No, he would be increasing his line.

Q. Does that mean sell four hundred? A. Yes.

Q. Does stop mean sell? A. Not necessarily.

Q. It means buy too, doesn't it?

A. Depends upon what connection it is used in.

Q. How do you explain the connection here to show that stop means sell?

A. In the first place you would look and see what his account showed, whether he had cotton bought or cotton sold. In this instance he evidently had 400 January that were bought.

Q. How do you know? By looking at the books?

A. I know it by the report.

Q. This alone,—you couldn't tell from that?

A. I could tell from that that he had 400 January and he sold them out on a stop.

Q. Here is one dated October 19th. State what that is?

A. It is a confirmation of telegraphic correspondence between Fred Browne of Crowder, Okla. and Thorn and Maginnis of New Orleans.

Q. It came out from your office, didn't it?

A. It looks so.

Q. Sent to Fred Browne. Sold Five January 87 on stop 18 cents. On the other side, "Stop five January eighteen cents.

218 We beg to confirm above exchange of telegrams between us today. Thanking you for this business and awaiting your further favors, etc." Mr. Thorn, I want to ask

you whether you received during those transactions with Mr. Browne, whether you received any orders in which he gave you an order to buy, and at the same time gave you an order to stop at the same figure?

A. I remember one at least.

Q. Other than February 1st?

A. This was on January 31st.

Q. Did you execute that order?

A. I think one end of it only.

Q. Why didn't you execute the other?

A. Because the market wasn't reached.

Q. Didn't go down to the point? A. Yes.

Q. Didn't you several times have this kind of orders from him and did you not within a few minutes after you bought, sell to cover?

A. If the market reached the point which his order called for, we undoubtedly did.

Q. Suppose he had authorized you to buy on the market, and that he said stop loss at ten, stop loss at a certain price, if that had been it, and it was already below 16.90 when you got the order to buy, would you have bought and sold him out?

A. Now I would have thought there would have been some error in that.

Q. Why?

A. Because the telegram on its face would not look right.

Q. Suppose the telegram was 19.50 and he sent you an order to buy on the market, and in the same order stopped loss at 19.25, and suppose before the telegram reached you, the price was 19.10, would you have executed the orders?

219 A. I would have bought it at the orders and then wired for information.

Mr. McDonough: I offer Exhibit 7 in testimony.

"Deft. Ex. 7, J. K. P.

Confirmation Of Telegraphic Correspondence Exchanged Between Mr. Fred Browne, Crowder, Okla. and Thorn & Maginnis, New Orleans, Oct. 19/16.

Received

Stop five Jan. eighteen cents

Sent

Contracts seem passing weaker hands. Interior advices report country merchants, speculators loaded up. Sold Five Jan. 87 on stop eighteen cents.

We beg to confirm above exchange of telegrams between us today. Thanking you for this business and awaiting your further favors, we beg to remain, Yours very truly,

(signed) THORN & MAGINNIS."

Q. I wish you would examine this one of October 13th and say if that is a similar confirmation of telegraphic correspondence? That is from your office, isn't it?

A. It seems to be, yes.

Mr. McDonough: I offer it in testimony.

"Dft. Ex. 8, J. K. P.

Confirmation Of Telegraphic Correspondence Exchanged between Mr. Fred Browne, Fort Smith, Ark. and Thorn & Maginnis, New Orleans, Oct. 13/16.

Received

Buy five N. O. Jan. on opening

Sent

Bot Five Jan. 07. Offerings light.

Our message should have read

Bot 200 Jan. @ 17.05

" 300 Jan. @ 17.07 instead of five at seven.

We beg to confirm above exchange of telegrams between us today.

Thanking you for this business and awaiting your further favors, we beg to remain—

Yours very truly,

(signed) THORN & MAGINNIS".

Q. Letter dated October 18th, 1916, and ask you if that is a letter from Thorn & Maginnis to Browne?

A. That seems to be an order, sir.

Mr. McDonough: I offer it in testimony.

"Dft. Ex. 9, J. K. P.

New Orleans, La. Oct. 18, 16.

Mr. Fred Browne,
Crowder, Okla.

220 Dear Sir:—

We beg to acknowledge your telegram of even date in accordance with which we have today entered the following order, which we understand is to be kept in force until either executed or cancelled.

Sell 500 Jan. @ 17.50 Stop

If incorrect, please advise.

Awaiting your further favors, we beg to remain,

Yours very truly,

SCC-CLB (signed) THORN & MAGINNIS."

Q. What is the meaning of that telegram which reads sell 500 January at 17.50 stop?

A. It means just what it says.

Q. Sell at stop order and to remain in force until executed or cancelled. What price were you authorized to buy it at under this telegram?

A. This is sell 500 January. at 17.50 stop.

Q. That is a case in which stop means to buy?

A. No, to sell.

Q. What were you authorized to buy it at, if anything?

A. Not authorized to buy it.

Q. What were you authorized to sell at? A. 17.50.

Q. What is the meaning of the word "stop"?

A. Sell at 17.50 if possible, or at the next best price obtainable.

Q. If the order means to sell at 17.50 what do you use the word stop for?

A. Oh, well, because that market was evidently very much higher than that price.

Q. Did he own 500 at that time?

A. I would have to consult the books on that.

Q. You don't know? A. I should say that he did.

Q. Then you are willing to say for once that he did?

A. If we confirmed it that way. I should say that is our letter.

221 Q. You mean you confirmed it by saying that he previously owned it?

A. I mean that would seem to indicate the fact that we entered his order to sell 500 January at 17.50.

Q. It would be the same thing if he didn't own a thing?

A. No.

Q. Why? A. You couldn't put a stop.

Q. You sell it at the market and then when it goes down to 17.50 you stop loss?

A. No, you buy it at the market and then sell it afterwards.

Q. This is a selling order? Sell 500 January at 17.50 stop?

A. That is what I said.

Q. That means to sell it at the market?

A. Not unless the market is 17.50 or lower.

Q. You just a moment ago stated that evidently the market was very much higher than that and that you were to sell it at 17.50?

A. If the market declined that much.

Q. That is what you say now?

A. Yes, sir.

Q. See if this is a letter from Thorn & Maginnis to Fred Brown?

A. Yes.

Q. Before asking you about that letter, I want to see if I understand you about the telegram in the letter of October 18th. I want to understand whether you as a cotton man understand that telegram to contain authority to buy?

A. That isn't a telegram. That is a confirmation.

Q. Now isn't this a telegram. It reads "Sell 500 January at 17.50 stop." We beg to acknowledge your telegram of even date in accordance with which we have today entered
222 the following order, which we understand is to be kept in force until either executed or cancelled: Sell 500 Jan. @ 17.50 stop?

A. That is not a telegram. We acknowledged his telegram.

Q. Isn't that the telegram about which you are talking about up here "Sell 500 January at 17.50 stop". Isn't that the telegram?

A. Not necessarily.

Q. What is the telegram?

A. That is the substance of the telegram.

Q. Does that telegram, if that is the telegram, and if that is the substance of it, does it authorize a purchase in order to stop the loss after the sale?

A. That authorized the sale.

Q. I am asking you if after the sale there is a purchase in order to stop the loss?

A. Sell 500 January at 17.50 stop.

Q. And buy it back at 17.50?

A. The order may read sell 500 January.

Q. I am not arguing with you about that.

A. I can't tell without looking at the books.

Q. I am not asking you about the books. I am asking you if that doesn't mean to sell 500 January and then stop the loss by buying to cover at 17.50?

A. Yes.

Q. That took a long time to get that.

A. Well, I am getting very tired; I will tell you that.

Q. Here is a letter dated October 23, 1916. I want to introduce that.

"Dft. Ex. 10. New Orleans, Oct. 23/16.

Mr. Fred Browne,
Crowder, Okla.

Dear Sir:—

We beg to acknowledge your several telegrams of even date in accordance with which we have today entered

223 for your account the following orders, which we understand are to be kept in force until executed or cancelled:

Sell 500 Dec. @ 18.30 Stop
Sell 500 Jan. @ 18.30 "

If incorrect, please advise.

Awaiting your further favors and with kindest regards, we beg to remain,

Yours very truly,

SCC-CLB (Signed) THORN & MAGINNIS."

Q. Mr. Thorn, I will ask you if the meaning of the little character between December and 18, what that means?

A. A-t, at.

Q. Now then under that telegram reading "sell 500 December at 18.30 stop" what did you have authority to do?

A. I should say sell 5 December at 18.30 stop. That is what it looks like to me.

Q. Is that all you infer from that?

A. That would probably have to be taken in connection with his account, how it stood at that time.

Q. Is that all you mean by that telegram? Is that all you infer from it?

A. I don't see this telegram.

Q. Assuming that to be the telegram, what is its meaning?

A. Sell 500 December at 18.30 stop.

Q. What is the meaning of stop.

A. I think that has been thoroughly explained by—

Q. Well, what is it?

A. To sell it when it gets to 18.30.

Q. Does it not mean sell 500 December at the market and stop loss by buying to cover at 18.30?

A. I don't think it does. It may, however.

Q. Isn't that exactly the same telegram that you just now said meant that?

A. I don't say it was a telegram. I don't think we should assume anything. If he wants to hand me a telegram,

224 —that is not the telegram.

Q. That is over your signature? You are not willing to accept your own signature as showing that that was the telegram?

A. It doesn't say that.

Q. "We beg to acknowledge receipt of your several telegrams of even date in accordance with which we have today entered for your account the following orders, which we understand are to be kept in force until executed or cancelled"?

A. That letter doesn't say that is a telegram.

Q. It says a telegram has been received and you give this as the meaning of the telegram?
A. That is what we thought it meant.
Q. What do you mean by that?
A. I think I have answered that.
Q. That means then that you were authorized to sell 500 January at the market and cover it by buying the same amount at 17.50?
A. I didn't say that.
Q. That is what you said a while ago? A. I didn't.
Q. What does it mean?
A. I say it indicates to me to sell 500 January at 17.50 when the market reaches that, or the next best price thereafter.
Q. Then what does stop mean?
A. That is what it means.

Mr. Oglseby: Your Honor, he is going over the same thing again and again.

The Court: I think this is the point. He uses the word sell and at the same time he uses the word stop. Now if both mean the same, I understand Mr. McDonough's inquiry
225 to be, why [woth] were used, if both were used?

Mr. McDonough: It is a very important matter, Your Honor.

The Court: That is the question you asked?

Mr. McDonough: Yes.

Mr. Cravens: That is a matter of argument.

Mr. McDonough: That is for the jury to determine. I don't know whether he forgot it or not. I mean here are two telegrams, Your Honor, that have exactly similar wording except different months and different figures. Now after a long time and after a great deal of questioning Mr. Thorn said that the telegram which read sell 500 January at 17.50 stop, meant sell it at the market and buy to cover at 17.50. And then I said it took a long time to get it, and then he made the remark that he was very tired. Now I have got the same thing over there and he says that is not the meaning of it. I am trying to call his attention to that to let him know that he has made those statements and let him explain them, if he can.

The Court: Now, if Mr. Thorn states that he made the one statement at one time and one at the other, then he can't explain it.

Q. Well, Mr. Thorn, if you can explain, I wish you would, whether there is any difference, and if so, what is the difference between the telegrams, assuming that is the telegram in the letter of October 18th, sell 500 January at 17.50 stop, and the letter of October 3rd which says sell 500 December at 18.30 stop.

A. As I have stated before, they are not telegrams; they are just confirmations of telegrams.

The Court: That is not the point.

Mr. McDonough: I said assuming they are the telegrams.

The Court: Regardless of whether they are the tele-
226 grams.

A. In the first instance an order to sell 5 January at 17.50 if the market reached there, and on the second case he would want to sell 5 December at 18.30 if the market reached that.

Q. Then if there is nothing in the telegrams to indicate power to buy if it went—

A. Yes, sir.

Q. These instructions are to sell and I don't see anything in the telegrams authorizing you to buy?

The Court: Is there anything in those words used there that in any connection would give you power to buy?

A. No.

Q. I show you a letter of October 25th and ask you if that is a letter from Thorn & Maginnis to Browne?

A. Yes, that is a letter from us.

"Dft. Ex. 11 New Orleans, Oct. 25/16.

Mr. Fred Browne,
Vrowder, Okla.

Dear Sir:—

We beg to confirm telegrams exchanged today and enclose herewith the usual confirmation slip which we trust you will find in order.

In accordance with your instructions, we today Sold for your account 500 December at Nineteen Cents on stop, advice of which we wired you and confirmation slip for which we enclose herewith.

Inasmuch as your original stop order was sent from Fort Smith, Ark., we accordingly reported the sale of these 500 Dec. at nineteen cents to that point today. Later receiving

your telegram from McAlester asking if we had sold on stop, we replied to McAlester that we had

Sold 500 Dec. @ 19 Cts.

and that there was no trading in September. This, of course, was a duplicate of report sent to Fort Smith, earlier in the day. In accordance with your wire instructions, we are sending statement to Crowder, Okla. and trust that same will reach you promptly. Awaiting your further favors, we beg to remain,

Yours very truly,

CBT*CLB (signed) THORN & MAGINNIS".

Q. I will ask you if this (ex. 12) went out from your office to Mr. Browne?

A. It seems to have.

227 "Dft. Ex. 12, J. K. P.

Confirmation of
Telegraphic Correspondence
Exchanged between Mr. Fred Browne, Crowder, Okla.
and Thorn & Maginnis, New Orleans, Oct. 25/16.
Received

Have you sold or stop is anything doing September New York or New Orleans quote.

Stop Five Dec. New Orleans nineteen cents, mail statement to Crowder.

Sent.

Sold five Dec. Nineteen cents.

(Deuplicate to McAlester)

Sold Five Dec. Nineteen Cents

No trading yet in December.

We beg to confirm above exchange of telegrams between us today.

Hoping to have the pleasure of serving you in the near future, we beg to remain,

Yours very truly,

(signed) THORN & MAGINNIS".

---

Q. Is this a paper sent from your office to Mr. Browne?

A. It seems to have been.

"Ex. 12, J. K. P.

Confirmation of
Telegraphic Correspondence
Exchanged between Mr. Fred Browne, Crowder, Okla.
and Thorn & Maginnis, New Orleans, Oct. 31st, 1916
Sent

Bot four July Seventy Stop. Spots steady; bulls supporting.

We beg to confirm above telegram sent you today.

Thanking you for this business and awaiting your further favors, we beg to remain,

Your very truly,
(signed) THORN & MAGINNIS."

Q. Is this a letter sent by your office to Mr. Browne?
A. It seems to have been from our office.

"Ex. 13, J. K. P.

New Orleans, Oct. 31st, 1916.

Mr. Fred Browne,
Crowder, Okla.

Dear Sir:—

We beg to confirm telegram sent you today advising that we had bought for your account

400 July @ 18.70 on stop

which order we duly executed and reported to you as per memo enclosed herewith.

We also beg to acknowledge your instructions to cancel your open stop to

Sell 200 Jan. @ 17.75 and in its stead to enter

the following, which we understand is to be kept in force until executed or cancelled:

Sell 200 Jan. @ 17.90 Stop

If incorrect, please, advise.

Opening prices this morning were lower than due on the parity of Loverpool, btu almost immediately a better
228 demand was in evidence and after the early liquidation, the market assumed an advancing tendency with final prices tonight about sixty points higher than those of yesterday. It was early apparent that liquidation had about run its course and during the decline of yesterday, some short interest had developed. This, in the late session covered and with spots showing practically no weakness, bullish sentiment took hold of the market with the result as above indicated. There is an underlying belief that the crop this year is below consumptive requirements and until this is disproved, it would

appear as though the best policy would be to make purchases on periods of weakness.

Awaiting your further favors, we beg to remain,

Yours very truly,

THORN & MAGINNIS"

Q. I want to ask you Mr. Thorn, what is the meaning of this in the letter: It was early apparent that liquidation had to run its course and during the decline of yesterday some short interest had developed. What do you mean by that?

A. Liquidation would indicate that there had been some selling in the market.

Q. What I want to ask and the only thing I meant to ask was what "some short interest had developed".

A. It means some people who had sold in the market short.

Q. Those who had sold before they had bought?

A. Yes, sir.

Mr. McDonough: I offer this statement in evidence. (Ex14)

"Ex. 14, J. K. P. New Orleans, Oct. 31, 1916.

Mr. Fred Browne, Crowder, Okla.

Dear Sir:

At the close of business this day our books show the following Open Trades for your account. Please examine and promptly report any error.

| Purchases | | | | Sales | | | |
|---|---|---|---|---|---|---|---|
| Date | Quantity | Month | Price | Date | Quantity | Month | Price |
| Oct. 5 | 200 | May | 17.44 N. Y. | Sept 22 | 200 | May | 16.40 |
| 30 | 200 | Jan | 18.28 | | | | |

Yours truly,

(signed) THORN & MAGINNIS.

Per L."

Q. That was a sale made in New York?

A. I wouldn't call it that.

229 Q. But that "N. Y". meant New York?

A. Purchases in New York.

Q. Did you execute that yourself in New York?

A. No, we executed it [though] some of our correspondents.

Q. Mr. Thorn, a non-member of the Exchange has no right to deal on the New York Exchange?

A. Not across the ring; he can deal through brokers.

Q. Only brokers have the right to deal across the ring?

A. That is right.

Q. Then if you are dealing and representing Mr. Browne as a broker, or someone else, you deal with another broker?

A. Yes.

Q. The other broker is supposed to have a principal back of him? A. Yes.

Q. Do you have anything to do with the name of the other party back of the broker you are dealing with? A. No.

Q. Do you have any knowledge of who it is? A. No.

Q. You only know the broker yourself? A. That is right.

Q. The New Orleans rules regulates the people who trade?

A. They only allow members to trade. They only have jurisdiction over the members.

Q. I will ask you if these were market letters sent out to your customers at the time these transactions were going on?

A. It seems to be; it is not signed. It is a mimeograph you know.

"Ex. 15, J. K. P.

Market Letter.

Thorn & Maginnis,

Cotton Brokers,

New Orleans, Ocober 23rd, 1916

230 Dear Sirs:

Opening prices this morning reflected the strength of Liverpool and after some early liquidation, the market assumed an advancing tendency with final proces tonight about $4.00 per bale higher than those of yesterday. A good character of buying was in evidence almost from the outset, and in the absence of selling, the market thoughout today's session displayed a very firm undertone, with final prices as above stated. Spots also recorded a very good advance with the belief more or less general that before the present movement is culminated, that much higher prices will obtain. In the meantime, an active traders market will likely obtain with weather developments as well as spots news furnishing the basis for daily price changes. The strength of the situation seems to rely in the Dry Goods situation which indicate a most healthy condition.

Contracts in New Orleans market closed as follows: January 16.72, March 18.97, May 19.15, October 18.36, November 18.37, December 18.58. Middling 18.13.

Yours very truly,

(signed) THORN & MAGINNIS."

"Ex. 16, J. K. P.
Market Letter.
Thorn & Maginnis,
Cotton Brokers,
New Orleans, October 25th, 1916.

Dear Sirs: The census returns as published this morning, while somewhat smaller than generally expected were in effect much larger than any previous record and this gave rise to the belief that possibly, the final ou-turn might be larger than now expected. Opening prices showed a net advance of about 30 points and the market ruled more or less nervous during the greater part of the session, but towards the close, underlying nervousness was in evidence and on limited selling, the market during the last hour developed acute weakness and declined almost $4.00 a bale from the highest point reached today. There was no special reason for this beyond the fact that the technical position is unsound, and while the belief tonight seems to be that some further recession is in order, yet, opinions for ultimate results still favor much higher levels.

Contracts in New Orleans market closed as follows: November 18.20, December 18.45, January 18.60, March 18.80, May 19¢ Middling 18.75.

Yours very truly,
THORN & MAGINNIS."

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"Ex. 17, J. K. P.

Market Letter.

Thorn & Maginnis,

Cotton Brokers.

New Orleans, Ocober 31st, 1916.

Dear Sirs:

Opening prices this morning were lower than due on the parity of Liverpool, but almost immediately, a better demand was in evidence and after the early liquidation, the market assumed an advancing tendency with final prices tonight about sixty points higher than those of yesterday. It was early apparent that liquidation had about run its course and during the decline of yesterday, some short interest had
231 developed. This, in the late session covered, and with spots showing practically no weakness, bullish sentiment took hold of the market with the result as above indicated. There is an underlying belief that the crop this year is below consumptive requirements and until this is disproved,

it would appear as though the best policy would be to make purchases on periods of weakness.

Contracts in the New Orleans market closed as follows: November 18.20, December 18.45, January 18.59, March 18.35, May 19¢ July 19.13. Middling 18.13.

Yours very truly,
THORN & MAGINNIS."

Q. It was early apparent that liquidation had about run its course and during the decline of yesterday some short interest had developed. I will ask you first, what is meant by liquidation? A. Selling.

Q. Does that mean selling when you have no cotton, or does it mean selling where you are already long in cotton?

A. I would consider it to mean liquidation of your present holdings?

Q. Then some short interest had developed means the same thing as you explained a while ago? A. I should say so.

Q. "This, in the late session covered" what does that mean? A. If anybody was short they bought to cover.

Q. That was on the New Orleans Cotton exchange?

A. Yes, sir.

Q. Tell us were they room traders or members of the exchange buying on their own account?

A. No telling who they were; just a surmise. You really don't know for a fact but that is what it looks like.

Q. You don't know whether it was members of the exchange selling short in order to get the benefit of a fall in price, or not, do you? A. I don't.

Q. Isn't it true that when you say a short interest
232 had developed, you meant that the person who did the short selling was going short on the market and selling it with the expectation of getting a profit by its going down?

A. Not, necessarily; it would indicate that they had sold.

Q. If it don't indicate that why would you say in your market letter that later they covered? Does that mean that that market letter is just an opinion? Does your market letter when you say that they sold short and then covered, that means they bought to cover? A. Yes.

Q. And to close out the deal, didn't it? A. Yes.

Q. And did it on the same date? That is what you say here in the market letter? A. Not necessarily.

Q. What do you mean?

A. Mean that those who were short bought to cover.

Q. That is what I asked you.

A. They might not have been short on that day.

Q. But you say in your letter that it developed that day?
A. I say it developed on that day.
Q. It was early apparent that liquidation had about run its course. Long people are selling there, as you mean?
A. That is what I said a while ago.
Q. And during the decline of yesterday, that would mean that the short selling developed?
A. Just some short interests had developed.
Q. Does not that mean that those persons who took part in the short selling had reached the conclusion that the market was weak and would go lower, and therefore, they
233 sold, in order to get the benefit of a fall in price?
A. It might be so construed.
Q. And when you say they covered, that means they bought it back? A. That is what it means.
Q. That means to buy it back and take your profit, or lose, whichever it means? A. Yes.

Mr. McDonough: I offer Exhibit 18.

"Ex. 18, J. K. P.

Confirmation Of Telegraphic Correspondence
Exchanged between Mr. Fred Browne, Crowder, Okla.
and Thorn & Maginnis, New Orleans, Oct. 24/16.
Received

Buy Five December New Orleans and Five Jan. New Orleans

Sent

Bot One Jan. 86 and four 87
Bot Five Dec. 76

We beg to confirm above exchange and telegrams between us today.

Thanking you for this business and awaiting your further favors, we beg to remain,

Yours very truly,
THORN & MAGINNIS."

---

Mr. McDonough: I offer Exhibit 19.

"Ex. 19, J. K. P.

New Orleans, Oct 20th, 1916.

Mr. Fred Browne,
Crowder, Okla.

Dear Sir:—

We beg to confirm telegrams exchanged today and enclose herein the usual confirmation slip which we trust you will find in order.

In accordance with your instructions, we today entered for your account the following order, which we understand, is to be kept in force until either executed or cancelled:

Sell 200 January @ 17.75 Stop

If incorrect, please advise.

Awaiting your further favors and at all times glad to hear from you, we beg to remain,

Yours very truly,

SCC-CLB THORN & MAGINNIS."

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Mr. McDonough: I also offer one dated October 24th.

"Ex. 20, J. K. P.

Confirmation Of Telegraphic Correspondence Exchanged between Mr. Fred Browne, Crowder, Okla. and Thorn & Maginnis, New Orleans, Oct. 24/16.

234 Received

Make Stop Five Dec. Eighteen Seventy Five. Am drawing on you for Five Thousand.

Make stop five Jan. Eighteen Fifty, Five Dec. Eighteen twenty-five.

Make stop Five Jan. Eighteen Seventy Five, Five Dec. Eighteen Fifty.

Sent.

Sold five Jan. 75 on stop.

As advised you, we sold 500 January @ 75 and still hold open order to Sell 500 Dec. @ 18.75 stop which will be kept in force until either executed or cancelled.

Thanking you for past favors, we beg to remain,

Yours very truly,

(signed) THORN & MAGINNIS."

Q. I wish you would explain the first telegram there Mr. Browne, will you state what it means?

A. He wants to enter a stop order, I should judge, on 5 December at 18.70.

Q. Does that mean to sell 5 December at 18.70, or does it mean to buy? A. You couldn't tell from that.

Q. What does the next telegram mean which reads "make stop five January 18.50, five December 18.25"?

A. It depends on what his holdings were at that time.

Q. You couldn't tell from that? A. No.

Q. Does that mean to buy or sell both?

A. It would mean one, I should judge.

Q. You don't know without seeing it. Take the next telegram, "Five December 18.25" what is the meaning of that latter part of the telegram. Does that mean to sell or buy?

A. Depended on whether he had cotton long or short.

Q. The next telegram "Make stop five January 18.75, five December 18.50". Can you tell whether that is a buy or sell order? A. It would depend on what his holdings were.

Q. You don't know what it is?

235 A. I say it would depend—

Q. If you don't know, say so.

A. I would not know without seeing the books.

Mr. McDonough: I offer market letter of October 24th.

"Ex. 21, J. K. P.

Market Letter,
Thorn & Maginnis
Cotton Brokers,
New Orleans, October 24, 1916.

Dear Sirs:

The market today made another sharp advance on rebuying by former bulls, on small crop estimates issued by a prominent Chicago House, and reported deterioration in the India crop by excessive rains.

The weather map today was clear and temperatures moderate. There was also some buying today on expectations of a smaller Ginning Report than had been previously looked for, which is due tomorrow morning at nine o'clock.

Manchester cabled that higher prices were checking business. There was further realizing by Wall St. and other longs and the market presented a decidedly two-sided appearance, ruling very erratic with sharp fluctuations throughout the day. While all information coming into the market continues to be of a bullish nature, we think it prudent to exercise more than ordinary caution at present levels.

Contracts in the New Orleans market closed as follows: January 19.02, March 19.28, May 19.45, July 19.57, October 18.61, December 18.88. Middling 18.50.

Yours very truly,
THORN & MAGINNIS."

Q. I want to ask you who reported the India crop deteriorated?

A. I say that they had poor cotton in India and the crop was bad.

Q. I don't want to argue with you. If you can't answer it say so.

A. Well, I didn't mean to be otherwise than courteous.

Q. Manchester cabled that higher prices were checking business.

A. That refers to the Manchester, England Spinning market.

Q. I didn't ask you anything about the spinners market. Your market letter says "There was further realizing by Wall St. and other longs". What do you mean by that in your market letter?

A. Well, sir; that is a pretty broad term. It generally indicates large interests in New York, big moneyed interests.

Q. I don't seem to be able to make myself clear. I asked you what you meant by "There was further realizing by Wall Street"?

236 A. It would indicate that some of the big people in New York who are generally spoken of as Wall Street had cotton long and had sold out.

Q. Telegram received. Buy two January New Orleans answer Crowder.

I offer in evidence Ex. 22.

"Ex. 22, J. K. P.

Confirmation Of Telegraphic Correspondence

Exchanged Between Mr. Fred Browne, Crowder, Okla. and Thorn & Maginnis, New Orleans, Oct. 30th, 1916.

Received

Buy two Jan. New Orleans answer Crowder.
Sell four July New Orleans

Sent

Buy two Jan. 28. Heavy Liquidation Liverpool.

Sold four July Eighteen Fifty four. Less Bullish enthusiasm.

We beg to confirm above exchange of telegrams between us today.

Thanking you for this business and awaiting your further favors, we beg to remain,

Yours very truly,

THORN & MAGINNIS."

---

Mr. McDonough: I offer in evidence letter of November 4, 1916.

"Ex. 23, J. K. P.

New Orleans, Nov. 4/16.

Mr. Fred Browne,
Crowder, Okla.

Dear Sir:—

We beg to confirm telegrams exchanged today and enclose herewith the usual confirmation slip which we trust you will find correct.

We understand that your open instructions to Sell 200 Jan. B/C @ 17.90 on stop continue in force, and unless advised to the contrary, we shall be governed accordingly.

Contract values during the week have recorded a net advance of about ten points whereas spots have lost about a like amount. Trading has been of a smaller volume and largely confined to the professional element, with the tendency more or less apparent to even up commitments over the forth-coming Presidential election as well as the Census Report to be published on Wednesday morning next. The tone for the time mentioned has displayed more or less nervousness and fluctuations at times have been erratic, but on the whole, the situation has undergone no material change and the potent factors are practically the same as they were a week ago. Sentiment as a whole continues bullish for ultimate results, but in the meantime, the disposition seems to be to accept profits of periods of strength. The spot situation is about the
237 same with holders displaying a very firm attitude.

With kindest regards and hoping to have the pleasure of serving you again in the very near future, we beg to remain—

Yours very truly,

SCC/CLB (signed) THORN & MAGINNIS."

Q. I want to ask you the meaning of a phrase used in that: "Trading has been of a smaller volume and largely confined to the professional element". What do you mean by professional element?

A. Those people who stay in the Exchange most of the time and operate in cotton.

Q. Buy and sell cotton? A. Yes.

Q. To make money on the rise and fall of prices?

A. I suppose that is what they buy for; they don't buy to lose.

Q. What do you mean by "with the tendency more or less apparent to even up commitments over the forth-coming Presidential election?

A. Evening up commitments would indicate that certain people were buying in or would sell out, if they were long.

Q. They wanted to take their profit?
A. It might not be any profit.
Q. They wanted to even up?
A. It means that they wanted to cover the contract.
Q. That means that they wanted to get out of the trade, you mean, either take the loss or profit whatever it is?
A. Whatever it was.

"Ex. 24, J. K. P.

Confirmation Of Telegraphic Correspondence Exchanged Between Mr. Fred Browne, Crowder, Okla. and Thorn & Maginnis, New Orleans, Nov. 4/16.

Received

Buy two Jan. N. O.

238 Sent.

Bot two Jan. 40.

Quiet market, undertone steady.

We beg to confirm above exchange of telegrams between us today.

Thanking you for this business and awaiting your further favors, we beg to remain,

Yours very truly,
THORN & MAGINNIS."

---

"Ex. 25, J. K. P.

New Orleans, Nov. 6th, 1916

Mr. Fred Browne,
Crowder, Okla.

Dear Sir:—

We beg to confirm your telegram of even date in accordance with which we have today entered for your account the following order, which we understand is to be kept in force until either executed or cancelled:

Sell 400 January @ 18.25 Stop

If incorrect, please advise.

We understand that your instructions of today cancels your open order of the 30th. ult. to

Sell 200 January @ 17.90 Stop

and in the absence of instructions to the contrary, we shall be governed accordingly.

Opening prices this morning only partially reflected the strength of Liverpool, but almost immediately turned easier under liquidation induced by the desire to even up over the election as well as the Census Report to be published on Wednesday morning. The market throughout the session dis-

played a more or less nervous tone, but on the day, a net advance of about fifteen points was recorded, with sentiment still bullish for ultimate results. Advices from the interior indicate a very strong Spot situation with sellers of actual more or less indifferent at the present time. The market during the recent past has been pretty well liquidated, so if therefore, in a position to respond promptly to any bullish development.

Awaiting your further favors, we beg to remain—

Yours very truly,

SCC-CLB (signed) THORN & MAGINNIS".

---

"Ex. 26, J. K. P.

New Orleans, Nov. 8th, 1916.

Mr. Fred Browne,
Crosder, Okla.

Dear Sir:—

We beg to confirm telegrams exchanged today and enclose herewith the usual confirmation slip, which we trust you will find correct.

In accordance with your instructions, we today cancelled your Open Stop of the 6th. inst. to

Sell 400 B/C Jan. @ 18.25

and in its stead, we have today entered the following order, which we understand is to be kept in force until either executed or cancelled:

Sell 600 B/C Jan. @ 18.75 Stop

If incorrect, please advise.

At the time of the opening of American markets this morning, Liverpool showed a net advance of about forty
239 points over the final figures of Monday, which strength, private cables attributed largely to the steadiness of Egyptian markets. Opening prices fully reflected this showing, and while the Census Report of Cotton ginned to Nov. 1st. proved to be at about as expected, its showing as a market factor, was without influence. Initial prices showed a net advance of about forty points over those of Monday and almost immediately recorded a further improvement on the theory that the Republican Candidate had been elected. This news, however, seemed to be questioned in the early session and on the belief that this was not a fact, selling developed, which caused a more or less easier tone, though final prices tonight are about thirty points over those of Monday last. Sentiment

continues bullish as a whole for ultimate results, and the belief obtains that the Spot situation warrants the expectation of higher values ultimately.

Awaiting your further favors, we beg to remain—
Yours very truly,
SCC-CLB THORN & MAGINNIS."

---

"Ex. 27, J. K. P.

Confirmation Of Telegraphic Correspondence
Exchanged Between Mr. Fred Browne, Crowder, Okla.
and Thorn & Maginnis,

New Orleans, Nov. 8th, 1916

Received

Buy two January New Orleans

Sent

Bot two Jan. Nineteen Seven.
Chicago Herald says Wilson wins.
We beg to confirm above exchange of telegrams between us today.
Thanking you for this business and awaiting your further favors, we beg to remain—

Yours very truly,
THORN & MAGINNIS".

---

"Ex. 28, J. K. P.

Confirmation Of Telegraphic Correspondence
Exchanged Between Mr. Fred Browne, Crowder, Okla.
and Thorn & Maginnis,

New Orleans, Nov. 11th, 1916.

Received

Buy four Jan. New Orleans
How many Jan. am I long stop all nineteen cents.
How much to my credit.
Close all contracts wire amount to credit mail statement Fort Smith.
Buy two March N. O.

Sent

Sold six January Nineteen cents on stop.
Bot one Jan. 18 and three 19.
Declined sympathy Liverpool recovered south buying.
Your account four Jan. long.
Entering stop sell nineteen cents.
Sold four Jan. nineteen cents on stop.

Long two May New York short two May Orleans Long
240 four Jan. Orleans. Ledger credit Fifty six Hundred and Twenty Dollars

Your net credit all contracts closed forty three hundred forty five dollars.

Bought two May 38 here
Sold two May 65 New York
Bot two March 26.

We beg to confirm above exchange of telegrams between us today.

Thanking you for this business and awaiting your further favors, we beg to remain—

Yours very truly,
(signed) THORN & MAGINNIS".

Q. Declined sympathy Liverpool. What do you mean by that?

A. In other words, Liverpool had gone down and we went down because Liverpool went down.

"Ex. 29, J. K. P.

New Orleans, Nov. 8th/16.

Mr. Fred Browne,
Crowder, Okla.

Dear Sir:—

We beg to acknowledge your telegram of even date in accordance with which we have today cancelled your open stop to

Sell 600 B/C Jan. @ 18.75

and instead, entered the following order, which we understand is to be kept in force until either executed or cancelled:

Sell 600 B/C Jan. @ 19¢ Stop

If incorrect, please advise.

During the early trading, the market ruled very unsettled and made a substantial advance of over $1.00 a bale on Waldorf and Western crowd buying in anticipation of the election of Mr. Hughes. This buying found room traders short, and due to their covering, the market made a very rapid advance, a part of which was later lost when news indicated that Mr. Wilson still had a good chance of being elected.

There was a good spot demand reported from Texas, and locally the market was said to be firm and was finally quoted thirteen points higher. Spot sales in the South recently have

been large and Middling Cotton is quoted at 19¢ in at least six interior points.

At the close, the market ruled, very unsettled due to the continued uncertainty in connection with the election. Press Reports today indicated that the Administration would promptly take up recent developments in connection with submarine activity, and, if it should develop that Germany had departed from her policy as formerly announced, that it was possible that relations between the two countries may become strained again at any time. While the undertone of the market remains firm, the possibilities in this connection should not be overlooked.

Awaiting your further favors, we beg to remain—

Yours very truly,

SCC-CLB (Signed) THORN & MAGINNIS."

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241 "Ex. 30, J. K. P.

New Orleans, Nov. 13, 16.

Mr. Fred Browne,
Fort Smith, Ark.

Dear Sir:—

Your draft on us for $3,000.00 was presented today and paid. This leaves a credit against your open contracts of about 90 points at the close of the market tonight. Inasmuch as we have been requiring $7.00 per bale at existing levels, we would thank you to make the necessary deposit to margin your contracts to these requirements. At the close tonight, you have 400 B/C long. In the event that it becomes necessary to call on you for additional margins before this letter reaches you, we will wire you. We simply wanted to explain our requirements under present conditions which we believe you will understand the necessity for.

The market ruled very steady today and showed an advancing tendency. The Memphis Commercial Appeal estimated this year's yield at 10,862,000 bales, exclusive of linters, which fully confirmed the most bullish expectations. The spot market and Dry Goods situation, however, offer the main strength of the future markets, and unless some political complication should arise over the recent submarine activities, it looks as though reactions would be but temporary. While the present uncertainty exists, however, in connection with possible International complications, we believe conservatism advisable.

Yours very truly,

CBT/CLB (signed) THORN & MAGINNIS".

---

"Ex. 31, J. K. P.

Confirmation of
Telegraphic Correspondence

Exchange Between Mr. Fred Browne, Crowder, Okla.
and Thorn & Maginnis,

New Orleans, Nov. 15th, '16.

Received

Buy two Jan. New Orleans answer here
Bot two Jan. 47. Liquidation seems to increase.
Kindly deposit Six Hundred Dollars, advise and have bank wire Advanced on Norden estimate eleven million eight including linters. Big spot interest buying March.

We beg to confirm above exchange of telegrams between us today.

Hoping to have the pleasure of serving you again in the very near future, we beg to remain—

Yours very truly,

(signed) THORN & MAGINNIS."

---

"Ex. 32, J. K. P.

New Orleans, Nov. 15th, 16.

Mr. Fred Browne,
Crowder, Okla.

Dear Sir:—
We beg to confirm telegrams exchanged today and enclose herewith the usual confirmation slip which we trust you will find in order.

In accordance with your instructions, we have today entered for your account the following orders, which we understand are to be kept in force until either executed or cancelled:

Sell 400 B/C January @ 19@ Stop
242 Sell 200 B/C March @ 19.25 "

If incorrect, please advise.

Liverpool was disappointing this morning, and this induced some scattered selling at around the opening, which forced a net decline of about fifteen points from the closing prices of yesterday. At under 45 for Jan., However, a good demand seemed in evidence, and in the absence of continued selling, the market toward the noon hour assumed an advancing ten-

dency with final prices tonight showing a net advance of about five points and at new high levels for the season. Sentiment continues bullish as to ultimate results, with the feeling more or less general, that without weakness in spots, that any decline of moment is likely to encounter a very good demand.

Yours very truly,

SCC/CLB (singed) THORN & MAGINNIS".

---

"Ex. 33, J. K. P.

Confirmation of
Telegraphic Correspondence

Exchange Between Mr. Fred Browne, Fort Smith, Ark.
and Thorn & Maginnis,

New Orleans, Nov. 11th/16.

Received

Buy two January

Sent

Bot two January 06.

We beg to confirm above exchange of telegrams between us today.

Thanking you for this business and referring you to our Weekly Market Letter herein enclosed, we beg to remain—

Yours very truly,

(signed) Thorn & Maginnis."

---

"Ex. 34, J. K. P.

Confirmation of
Telegraphic Correspondence

Exchanged Between Mr. Fred Browne, Crowder, Okla.
and Thorn & Maginnis,

New Orleans, Nov. 16/16.

Sent

Advanced sympathy Liverpool, reported trade buying, market nervous, very speculative.

We confirm out today's wire, and remain—

Yours very truly.

(signed) THORN & MAGINNIS."

---

"Ex. 35, J. K. P.

New Orleans, Nov. 16/16.

Mr. Fred Browne,
Crowder, Okla.

Dear Sir:—

We beg to acknowledge your telegram of even date from McAlester, Okla., in accordance with which we have today cancelled your open stop on the 15th, inst. to

Sell 400 B/C Jan. @ 19¢ and
200 B/C Mar. @ 19.25

243 and instead, we have today entered the following order, which we understand is to be kept in force until either executed or cancelled:

Sell 400 B/C Jan. @ 19.65 Stop
" 200 B/C Mar. @ 19.90 "

If incorrect, please advise.

Awaiting you further favors, we beg to remain,

Yours very truly,

SCC-CLB THORN & MAGINNIS".

---

"Ex. 36, J. K. P.

Confirmation of
Telegraphic Correspondence

Exchanged Between Mr. Fred Browne, Crowder, Okla.
and Thorn & Maginnis,

New Orleans, Nov. 17/16.
Sent
Sold four Jan. 70 on stop.
Sold two March 20¢ on stop.

We beg to confirm above telegrams sent you today. thanking you for this business and awaiting your further favors, we beg to remain—

Yours very truly,

(signed) THORN & MAGINNIS."

---

"Ex. 37, J. K. P.

Confirmation of
Telegraphic Correspondence

Exchanged Between Mr. Fred Browne, Crowder, Okla.
and Thorn & Maginnis,

New Oreleans, Nov. 18/16.

Received
Buy four January New Orleans
Sent
Bot four Jan. 87. New York wires South shows no weakness and advises purchases.

We beg to confirm above exchange of telegrams between us today.

Thanking you for this business and referring you to our market letter herein enclosed, we beg to remain—

Yours very truly,

THORN & MAGINNIS".

---

"Ex. 38, J. K. P.

New Orleans, Nov. 18/16.

Mr. Fred Browne,
Crowder, Okla.

Dear Sir:

We beg to confirm telegrams exchanged today and enclose herewith the usual confirmation slip, which we trust you will find in order.

In accordance with your instructions, we have today entered for your account the following order, which we understand is to be kept in force until executed or cancelled;

Sell 400 B/C Jan. @ 19.75 Stop

If incorrect, please advise.

Awaiting your further favors, we beg to remain,

Yours very truly, THORN & MAGINNIS".

244 Mr. Oglesby: We object to the introduction of the market letter signed Thorn & Maginnis and on the letter head of Thorn & Maginnis, as incompetent, irrelevant and immaterial.

Mr. McDonough: We offer it in testimony covering the period of transactions in controversy.

The Court: I would like for you to be a little more definite Mr. Oglesby.

Mr. Oglesby: It is simply a market letter such as this house and other brokerage houses got out, possibly trying to forecast the market. I do not think it proves or disproves any of the issues involved in this case.

The Court: The letter, I think is [compentent], as showing the transactions between the parties, that passed between them. It is one of the letters that was sent. I think it is competent. Objection will be overruled.

Mr. Oglesby: Save our exception. We ask that the market letters which have been introduced be stricken from the record on the same ground, and the jury admonished not to consider them.

The Court: The request will be denied and your exception noted.

"Ex. 39, J. K. P. Market Letter.

New Orleans, November 17, 1916.

Dear sirs:

The market opened higher again today under the impetus of another very strong Liverpool. At the advance, there was considerable realizing for speculative accounts, and although for a time the new buying was sufficient to more than counteract the selling, as the day wore on, selling increased and finally, prices gave way sharply, declining 47 to 51 points from high. At the decline, there was a renewal of investment buying and prices recovered about 15 to 18 points and closed 7 to 10 points down on the day. The National Ginners figures were given as 981,000 bales for the period, which were slightly larger than general expectations.

While big firms were reported to be competing for Cotton in the Southwest and factors were said to be holding cotton here for 20¢ for Middling, the desire to realize more than offset these influences and the easier tendency resulted. The market at the present time is an intensely nervous and speculative affair and is easily influenced one way or the other by a moderate number of transactions. St. Louis interests were reported to have sold 40,000 bales today. Should the liquidation continue tomorrow, it could only be done at a further recession in prices. Contracts in the New Orleans market clos-

ed as follows; october 18.46, December 19.68, January,
245 19.81, March 20.08, May 20.29, July 20.41. Middling 19.82.

Yours very truly,

(signed) THORN & MAGINNIS".

---

"Ex. 40, J. K. P.

Market Letter
Thorn & Maginnis
Cotton Brokers,
209 Varieties Place,

New Orleans. November 21st, '16.

Dear Sirs:

The Census figures of Cotton ginned up to Nov. 14th, were about as expected, but contrary to general expectations, its effect on the market was more bearish than otherwise. Opening prices reflected this showing and while there was a rally in the early session, yet, periods of strength found offerings very free and on the day, a net decline of about thirty odd points recorded. The spot situation seems to be the dominant factor just now, but there is a growing belief that present prices discount much that is unfavorable and that it will require constant support to sustain the present level of values.

Contracts in the New Orleans market closed as follows: October 18.59, December 19.99, January 20.14, March 20.42, May 20.61. Middling 20.25.

Yours very truly,

(signed) THORN & MAGINNIS."

---

"Ex. 41, J. K. P.

Thorn & Maginnis
Cotton Brokers

New Orleans November 20th. '16.

Mr. Fred Browne,
Crowder, Okla.

Dear Sirs:—

We beg to acknowledge your two telegrams of even date—the first changing your open stop to

Sell 400 B/C Jan. @ 19.75 to 20.25

and the second, changing this latter stop from 20.25 to 20.40.

In accordance with the latter, we have to-day entered for your account the following order which we understand is to be kept in force until executed or cancelled:

Sell 400 B/C Jan. @ 20.40 stop

If incorrect, please advise.

With kindest regards and awaiting your further favors, we beg to remain—

Yours very truly,

(Signed) THORN & MAGINNIS"

SCC-CLB

---

246 "Ex. 42, J. K. P.

Market Letter

Thorn & Maginnis,
Cotton Brokers,
209 Varieties Place,

New Orleans, November 20th. '16.

Dear Sirs:

Opening prices this morning only partially reflected the strength of Liverpool, but almost immediately developed steadiness with final prices to-night showing a net advance of about $2.00 a bale. At times to-day the market displayed a more or less nervous tone, but spots were steady and in good demand and the advance in the late session reflected this condition. Levels, of course, are high but inasmuch as spots seem to be leading the advance, it would not appear reasonable to expect any material recession as long as present conditions obtain. Needless to say, sentiment is very bullish and on periods of weakness the market receives good support from spot interests.

Contracts in the N. O. market closed as follows: October 18.98, December 20.29, January 20.47, March 20.75, May 20.96, July 21.07. Middling 20.13.

Yours very truly,

(signed) THORN & MAGINNIS"

---

"Ex. 43, J. K. P.

Confirmation of
Telegraphic Correspondence

exchanged between Mr. Fred Browne,
Crowder, Okla.
and Thorn & Maginnis,
New Orleans, Nov. 21/16

Received.

Sell two New York March

Wire sale on stop.

Stop two March New York twenty One Ten

Sent

Sold One March 92 and 94 New York.

Sold Four Jan. Thirty One Stop.

Sold Four Jan. Twenty Thirty one on stop and advised promptly Crowder.

We beg to confirm exchange of telegrams between us today.

Thanking you for this business and awaiting your further favors, we beg to remain—

Yours very truly,

(signed) THORN & MAGINNIS"

---

247 "Ex. 44, J. K. P.

Confirmation of
Telegraphic Correspondence
Exchanged Between Mr. Fred Browne,
Crowder, Okla
and Thorn & Maginnis
New Orleans Nov. 22/16

Received

Stop two New York March Twenty one cents.

Sent

Market meeting more Cotton advances; expect more two sided fluctuations.

We beg to confirm above exchange of telegrams between us to-day.

At all times glad to serve you, we beg to remain--

Yours very truly,

(Signed) THORN & MAGINNIS"

---

"Ex. 45, J. K. P.

Thorn & Maginnis
Cotton Brokers

New Orleans, Nov. 22/16

Mr. Fred Browne,
Crowder, Okla.

Dear Sir:—

We have carefully noted yours of the 20th. inst. referring to the execution of your order of Oct. 19th., and in connection therewith, we beg to hand you herewith the original telegram containing this order, which you will note bears the time as being sent at 12;40 P. M., though received over one hour later. The exact time as received is shown as 1:40 P. M., and allowing a minute for the handling and delivery, you will see from the enclosed official statement of the New Orleans Cotton Exchange where the execution as reported to you was entirely in order. As a matter of fact, reference to the records shows that we were most fortunate in being able to make the sale at this price, and we are quite sure that after reviewing the enclosed, you will agree with us as to this.

We trust that you will return to us the enclosed original telegram of the Western Union after you have noted same and thanking you in advance for your kindness, we beg to remain—with kindest regards,

Yours very truly,

(Signed) THORN & MAGINNIS"

---

248 "Ex. 46, J. K. P.

Confirmation of
Telegraphic Correspondence
Exchanged Between Mr. Fred Browne,
Crowder, Okla.
and Thorn & Maginnis,
New Orleans, Nov. 24/16

Received.
Sell three New York March.

Sent
Sold three March 36 New York;
8,000 notices out here and 25,000
New York all apparently stopped.
Bot two March 50 New York on open stop.

We beg to confirm above exchange of telegrams between us to-day.

Thanking you for this business and awaiting your further favors, we beg to remain—

Yours very truly,
(Signed) THORN & MAGINNIS"

---

"Ex. 47, J. K. P.

Confirmation of
Telegraphic Correspondence
Exchanged Between Mr. Fred Browne,
Crowder, Okla.
and Thorn & Maginnis,
New Orleans, Nov. 25/16

Sent

Bot three March Twenty One Cents on New York stop.
We beg to confirm above telegram sent you to-day.
Referring you to our Weekly Market Letter herein enclosed, we beg to remain—

Yours very truly,
(Signed) THORN & MAGINNIS"

---

249 "Ex. 48, J. K. P.

Thorn & Maginnis
Cotton Brokers
New Orleans, Nov. 27/16

Mr. Fred Browne,
Crowder, Okla.

Dear Sir:

We beg to confirm telegrams exchanged to-day and enclose herein the usual confirmation slip which we trust you will find correct.

In accordance with your last instructions, we have to-day entered for your account the following order, which we understand is to be kept in force until executed or cancelled:

Sell 400 B/C Jan. @ 20.15 Stop

If incorrect, please advise.

Awaiting your further favors, we beg to remain—with kind regards,

Yours very truly,

SCC-CLB (Signed) THORN & MAGINNIS"

---

"Ex. 49, J. K. P.

Confirmation of
Telegraphic Correspondence
Exchanged Between Mr. Fred Browne,
Crowder, Okla.
and Thorn & Maginnis,
New Orleans, Nov. 27th, '16.

Received.

Buy two Jan. New Orleans on opening stop at twenty points under purchase answer and mail statement to Crowder.

Buy four January New Orleans stop ten points under purchase Cancel other order answer Crowder.

Buy four Jan. New Orleans stop ten points under purchase.

Sent

Sold two Jan. 46 on stop

Sold two Jan. 45 on stop completing; cancel any wire received Postal

Only bought two Jan. 56 two 55 and Sold two Jan. 46 two 45 for your account to-day. Disregard Postal confirmation.

Bot two January 56 and two 55 Delay caused by confirming over postal who just say have no wire Crowder.

Bot four Jan. 25.

We beg to confirm above exchange of telegrams between us to-day.

Thanking you for this business and awaiting your further favors, we beg to remain—

Yours very truly,
(Signed) THORN & MAGINNIS"

---

250 "Ex. 50, J. K. P.

Confirmation of
Telegraphic Correspondence
Exchanged Between Mr. Fred Browne,
Crowder, Okla.
and Thorn & Maginnis,
New Orleans, Nov. 28th, '16.

Received.

Stop four January New Orleans twenty Cents.

Reduce stop four January Nineteen Ninety if already out buy Five Jan. New Orleans.

Sent.

Sold four Jan. Nineteen Ninety on stop.

Have changed stop to Nineteen Ninety, New York wires think all bullish news out and prefer sell on all bulges.

We beg to confirm above exchange of telegrams between us to-day.

Thanking you for this business and awaiting your further favors, we beg to remain—

Yours very truly,
(Signed) THORN & MAGINNIS"

---

"Ex. 51, J. K. P.

Thorn & Maginnis,
Cotton Brokers,
New Orleans, Dec. 1/16.

Mr. Fred Browne,
Crowder, Okla.

Dear Sir:—

We beg to confirm telegrams exchanged to-day and enclose herewith the usual confirmation slip, which we trust you will find correct.

In accordance with your instructions, we bought for your account at the close to-day

400 B/C Jan. @ 19.69

advice of which we wired you and slip for which we enclose herewith.

In accordance with your further instructions we have placed against this purchase an open stop to

Sell 400 B/C Jan. @ 19.59 Stop

If incorrect, please advise.

With kindest regards and awaiting your further favors, we beg to remain—

Yours very truly,

SCC-CLB (signed) THORN & MAGINNIS"

---

251 "Ex. 52, J. K. P.

Confirmation of
Telegraphic Correspondence
Exchanged Between Mr. Fred Browne,
Crowder, Okla.
and Thorn & Maginnis,
New Orleans, Dec. 4th. '16.

Received

Sell two New Orleans March stop ten over purchase.
Stop four March Twenty Cents How many am I short.

Sent

Sold two March 86. Liverpool unfavorably affected by political changes.

You are six March short with stops two at 96 and four twenty cents.

We beg to confirm above exchange of telegrams between us to-day.

Thanking you for this business and awaiting your further favors, we beg to remain—

Yours very truly,
(signed) THORN & MAGINNIS"

---

"Ex. 53, J. K. P.

Confirmation of
Telegraphic Correspondence
Exchanged Between Mr. Fred Browne,
Crowder, Okla.
and Thorn & Maginnis,
New Orleans Dec. 1st. '16.

Received

Buy four Jan. New Orleans stop ten under purchase.

Buy four Jan. New Orleans stop ten Under purchase wire balance to credit.

Buy four Jan. New Orleans on close stop ten under purchase.

Sent

Bot four Jan. 02 placing stop 92

Sold four Jan. 92 stop. Reported more disposition sell spots before bureau.

Bot four Jan. Ninety.

Ledger credit now Seventeen hundred seventy five dollars.

Bot four Jan. 69 on close

Please deposit One Thousand Additional.

Spots reported offered more freely causing decline.

Sold four Jan. 80 on stop.

252 We beg to confirm above exchange of telegrams between us to-day.

Thanking you for this business and awaiting your further favors, we beg to remain—

Yours very truly,
(signed THORN & MAGINNIS"

Q. Mr. Thorn, in this letter of December 1st appears a telegram received by you, "Buy 4 January New Orleans stop ten under purchase". Your reply appears to be "Bought four January 02 placing stop 92". Then you follow immediately "Sold four January 92". Can you tell the amount of time that took place between the receipt of that order and the purchase of the four January at 02 and the sale of it at 92?

A. The telegrams would show that.

Q. The original telegrams? A. Yes.

Mr. McDonough: I offer in evidence letter of December 2nd.

"Ex. 54, J. K. P.

Confirmation of
Telegraphic Correspondence

Exchanged between Mr. Fred Browne, Crowder, Okla.
and Thorn & Maginnis,
New Orleans, Dec. 2nd. '16.

Received

Sell two March New Orleans stop fifteen over purchase.

Sell two March New Orleans stop fifteen over purchase.

Sent

Sold four Jan. 59 on stop. Liquidation of yesterday still in evidence.

Sold two March 99. Rallied on weak end covering.

Sold two March 99.

We beg to confirm above exchange of telegrams between us to-day.

Thanking you for this business and referring you to our Weekly Market Letter herein enclosed, we beg to remain—

Yours very truly,
(signed) THORN & MAGINNIS".

---

"Ex. 55, J. K. P.

New Orleans, Dec. 2nd, '16.

Mr. Fred Browne,
Crowder, Okla.

Dear Sir:

We beg to confirm telegrams exchanged today and enclose herewith the usual confirmation slip, which we trust you will find correct.

In accordance with your instructions, we have today entered for your account the following order, which we understand is to be kept in force until either executed or cancelled:

253 Buy 400 B/C March @ 20.14 Stop

If incorrect, please advise.

The market during the week has been subjected to rather heavy general selling with the result that fluctuations at times, have been sudden as well as violent. For the time mentioned, a net decline of about $3.50 per bale has taken place with the feeling tonight that there is more liquidation to come. The fact that leading bulls have failed to support the market in times of need has given rise to the feeling that they will continue to pursue a waiting attitude, and in view of this, the outside demand has been materially reduced. Spots, however, continue relatively strong though reports today indicate a less urgent demand. Sentiment as a whole continues bullish for ultimate results, but the disposition seems to be to await the publication of the Government estimate before assuming fresh commitments.

Awaiting your further favors, we beg to remain—

Yours very truly,
SCC-CLB (signed) THORN & MAGINNIS".

Q. Now referring to the telegram, Mr. Thorn, of December 1, which is referred to in Exhibit 53, I exhibit to you the said telegram which reads: "Bot four Jan. 02 placing stop 92" and ask you if that is the telegram?

A. That seems to be the same telegram.

Q. What is the hour that that was received as shown on the telegram? A. 9:35 A. M.

Q. That is 25 minutes before 10, isn't it? A. Yes.

Q. Now this telegram showing the sale of that at 92, or showing the covering of it at 10:40 A. M.? A. No.

Q. What does it show? A. 10:45 A. M.

Q. It was sent from New Orleans at 9:27 and received at Crowder at 9:35? A. That is correct.

Q. Now then the other telegram was sent from New Orleans at 10:40 A. M. and received at 10:45 A. M.? A. Yes, sir.

Q. In about forty minutes after you got that telegram to act on that stop, you acted and notified him accordingly?

A. We acted in accordance with the telegram.

Q. The telegram you acted on was this: Buy four January New Orleans stop ten under purchase. Now that is the telegram that you acted on, wasn't it?

254 A. Apparently that is the telegram.

Q. Now then, in about 40 minutes afterwards you acted on the stop part of that order, didn't you? A. Yes.

Q. And reported it in that confirmation, didn't you?

A. Yes, that is a confirmation.

Mr. McDonough: I offer these two telegrams in evidence.

"Ex. 56, J. K. P.

NO, La. 1040 A 12/1/16

Fred Browne, Ex Ft. Sm.

Sold four Jany. 92 stop reported more dispositions sell spots before bureau.

THORN & MAGINNIS, 1045 A".

---

"Ex. 57, J. K. P.

New Orleans, La. 927 AM Dec 1 1916

Fred Browne,
Ft. Smith, Ark.

Bot four Jan. 02 placing stop 92.

THORN & MAGINNIS, 935 AM."

Mr. McDonough: I offer letter of Dec. 4th, 1916.

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"Ex. 58, J. K. P.

New Orleans, Dec. 4th, '16.

Mr. Fred Browne,
Crowder, Okla.

Dear Sir:—

We beg to confirm telegrams exchanged today and enclose herewith the usual confirmation slips, which we trust you will find in order.

In accordance with your instrutcions, we have today entered for your account the following stop orders, which we understand are to be kept in force until either executed or cancelled:

Buy 200 B/C March @ 19.96 Stop

Buy 400 B/C March @ 20¢ "

which latter, cancels your open instructions of Saturday to

Buy 400 March @ 20.14

If incorrect, please advise.

With kindest regards and awaiting your further favors, we beg to remain—

Yours very truly,

SCC-CLB THORN & MAGINNIS".

---

"Ex. 59, J. K. P.

Confirmation Of Telegraphic Correspondence

Exchanged Between Mr. Fred Browne, Crowder, Okla. and Thorn & Maginnis, New Orleans, Dec. 5th, '16.

Received

Stop six March Nineteen sixty

Buy Five March New Orleans stop ten loss.

255 Sell Four March New Orleans stop five loss.

Buy two Jan. N. O. stop ten loss

Sent

Bot six March Sixty seven on stop. Looks like liquidation over.

New York says National Ginners ten three to Dec. first indicating crop eleven four without linters.

Bot Five March 67. New York says market looks oversold.

Sold five March 57 on stop.

Sold four March 57. National Ginners ten three less outside support more conservatism.

Bot four March 62 stop; shorts covering and buying by old bulls caused advance.

Bot two Jan. 36; shorts covering.

We beg to confirm above exchange of telegrams between us today.

At all times glad to serve you and awaiting your further valued favors, we beg to remain—

Yours very truly,

THORN & MAGINNIS".

Q. Mr. Thorn, can you explain the meaning of those two telegrams, the one received by you "Stop six March nineteen sixty" and then the one sent by you "Bot six March Sixty seven on stop. Looks like liquidation over?"

A. Which part do you mean?

Q. Just tell what that meant: Bot six March sixty-seven on stop?

A. That would indicate that they bought 6 March at 67 on his stop order.

Q. On the order which just precedes that order?

A. Yes, it looks like it.

Q. What do you mean by Sixty-seven? You have 19.60 over on the telegram received and you have sixty-seven there. Does that mean that you sold at 7 points above the stop order?

A. Hardly.

Q. You say 19.60 and over here is 67?

A. It might be a typographical error.

Q. Does it mean that you sold 6 points over the stop order?

A. Was the contracts bot or sold?

Q. What I am trying to get at is whether he had the
256 cotton bought or sold?

A. I don't know whether he had bought them or sold them.

Q. That says bought?

A. Yes, he evidently had them sold.

Q. He was short then, wasn't he? A. Yes.

Q. And you have an order to sell at 19.67?

A. Well, that was a case of where you couldn't do it at exactly the price, and bought it at the next best price.

Q. He ordered you to buy? Is that the way you construe that? A. Yes. We had a stop on it.

Q. And you bought both? A. Yes.

Q. Mr. Thorn, in your letter of November 27th, Exhibit 49, you have a telegram to Mr. Browne reading: "Only bought two Jan. 56 two 55 and sold two January 46 two 45 for your account today". On what authority from him did you send

that message, or rather on what authority did you do that action and send that message,—I mean where is the telegram from him authorizing you to do that?

A. I don't see it here; it may have been previous instructions.

Q. Is there any telegram there authorizing that to be done?

A. Not on this particular date; it may have been a few days past.

Q. You would wait a few days before you would act?

A. It might have been a limited telegram.

Q. This is the original of that telegram, is it not?

A. It seems to be; yes.

Mr. McDonough: I offer it in testimony.

"Ex. 60, J. K. P.

Received at 1032 AM 11/27/1916.

Dated New Orleans, La. 1007 AM

To Fred Browne, Crowder, Okla.

Only bot 2 Jan 56 two 55 and sold 2 Jan 46 two 45 for your account today disregard postal confirmation.

T. & M."

257 Q. On the same letter of November 27th, you have a telegram set out reading: Sold two January 46 on stop. I will ask you if that is the original of that?

A. I can't tell whether it is the original; it looks like this is the confirmation of this.

Mr. McDonough: I will ask that the telegram be marked as Exhibit 61.

"Ex. 61, J. K. P.

Received at 1034 AM 11/27/1916.

Dated at New Orleans, La. 9.57 AM.

To Fred Browne, Crowder, Okla.

Dold 2 Jany. 46 on stop.

T. & M."

Q. In the same letter of November 27, 1916 you gave a telegram reading: "Sold two January 45 stop. Completing. Cancel any wire received Postal." I will ask you if that seems to be the original of that message?

A. That seems to be the confirmation of that telegram.

"Ex. 62, J. K. P.

Received At 1035 AM 11/27/1916

Dated New Orleans, La. 10 A. M.

To Fred Browne, Crowder, Ok.

Sold two Jan 45 stop completing cancell any wire received Postal."

THORN & MAGINNIS."

Q. I will ask you to examine that telegram and ask you if that seems to be the original of what you referred to in the same letter? A. That seems to be a copy.

"Ex. 63, J. K. P.

Received At 1030 A. M.

Dated At New Orleans, La. 9.40 A. M.

To Fred Browne, Crowder, Okla.

Bot 2 Jan. 56 and two 55 delay caused by confirming over Postal who just say have no wire Crowder.

T. & M. 1031 A. M."

Q. I also show you what seems to be the original night letter of telegram referred to in one of the letters, the date of which I have not before me at this moment. I remember reading it I think however, I am not very positive about
258 that, but I will ask you to read that and see if that is a copy of a telegram that you sent to Mr. Browne on the date named there, November 27th?

A. That seems to be a telegram sent by us.

Mr. McDonough: I offer it as exhibit 64.

"Ex. 64, J. K. P.

New Orleans, La. 27th Crowder, Okla. 11/27.

Fred Browne,
Crowder, Okla.

Early strength today reflected belief supply this year insufficient worlds requirements but later market eased report official Washington considering seriously checking export movement all commodities advices spots firm and sentiment as whole bullish but these leves check fresh buying through all agree resistance been countered period weakness market

looks purchase one recession but spot situation dominate factor.

THORN AND MAGINNIS 936 PM."

Q. I will ask you to look at this night letter dated on the same date and addressed to Mr. Browne and say if that is a telegram sent by you? A. It seems to be.

Mr. McDonough: I offer it as Exhibit 65.

"Ex. 65, J. K. P.

New Orleans, La. 2 PM 11/26. Crowder, Okla. 11/27/16

Fred Browne
Crowder

Times Picayune estimates crop exclusive linters and repacks eleven million and forty thousand advices interior indicate continued good demand spots sellers in different except in advances drygoods reports favorable with spinners disposed accumulate contracts on recession.

THORN AND MAGINNIS 1243 AM."

Q. We offer in evidence that original telegram, if you recognize that? (Handing witness paper)

A. Where is the confirmation of it? That seems to be a confirmation of this.

"Ex. 66, J. K. P.

New Orleans, La. 12 noon Nov 27 1916.

Fred Browne, Crowder, Okla.

Bot 4 Jan 25.

T. & M. 3 PM".

Mr. McDonough: I offer in evidence letter of December 6th.

259 "Ex. 67, J. K. P.

Confirmation of Telegraphic Correspondence

Exchanged Between Mr. Fred Browne, Crowder, Okla. and Thorn & Maginnis,

New Orleans, Dec. 6th. '16

Received

Buy two Jan. New Orleans answer here stop ten loss.

Stop four Jan. New Orleans 19.50 Wire ledger credit and amount Cotton.

Sent

Adverse political conditions abroad imparted easier tone todays market but offerings well taken at decline. Spot holders reported refusing meet weakness contract markets but little demand spots in evidence. Late strength due belief Congress will authorize increase freight rates as recommended by the President. Market fairly well liquidated and in position respond favorable developments.

Bot two Jan 61

Sold two Jan. Fifty one on stop and advised Crowder. Account now two Jan. long nineteen thirty six with open stop nineteen fifty. Ledger credit thirteen hundred eighty dollars. Increased shipping risks Liverpool, retirement some big bulls likely effect unfavorably. Spots here unchanged.

We beg to confirm above exchange of telegrams between us today.

Thanking you for this business and awaiting your further valued favors, we beg to remain—

Yours very truly,

THORN & MAGINNIS".

Q. Have you the originals of all those telegrams re-stated in the letters, as telegrams sent? A. No, sir.
Q. You haven't copies with you that you sent?
A. No, sir.
Q. Therefore, you are unable to give the hour and minute when those telegrams were sent and received? A. I am.

"Ex. 68, J. K. P.

New Orleans, Dec. 5th. '16.

Mr. Fred Browne,
Crowder, Okla.

Dear Sir:—

We beg to confirm telegrams exchanged today and enclose herewith the usual confirmation slip which we trust you will find correct.

In accordance with your last instructions, we have today entered for your account the following order, which we understand is to be kept in force until either executed or cancelled.

Sell 200 B/C Jan. @ 19.26 Stop

If incorrect, please advise.

Awaiting your further favors, we beg to remain—

Yours very truly,

THORN & MAGINNIS."

---

"Ex. 69, J. K. P.

Confirmation of
Telegraphic Correspondence
Exchanged Between Mr. Fred Browne, Crowder, Okla.
and Thorn & Maginnis,

New Orleans, Dec. 7th. '16.

Received

Buy two Jan. New Orleans

Sent

Late cables denote more favorable political situation abroad. Leading spot interests, Liverpool shorts principal buyers. Less selling pressure through tendency even up commitments pending Government estimate still apparent. Technical position market much improved but all depends spots. Reliable interior advices indicate spot holders refusing meet decline. Sentiment mixed.

Bot One Jan. 54 and One Jan. 53

Sold two Jan. 50 Stop. Rumored German note unsatisfactory United States.

We beg to confirm above exchange of telegrams between us today.

Thanking you for this business and awaiting your further favors, we beg to remain,

Yours very truly,

THORN & MAGINNIS".

---

"Ex. 70, J. K. P.

Confirmation of
Telegraphic Correspondence
Exchanged Between Mr. Fred Browne, Crowder, Okla.
and Thorn & Maginnis,
New Orleans, Dec. 8th. '16.

Received

Buy two March New Orleans stop ten loss.

Buy two March New Orleans stop ten loss wire ledger credit.

Sent

Heavy general liquidation today uncovered unprotected stops causing acute weakness and consequent decline. Failure leading bulls support market and unsettled political situation abroad tends intensify bearish sentiment which growing but all depends spots. Advices interior indicate holders nervous but unwilling sellers. Technical position market much improved but disposition await Government estimate apparent.

Bot two March 29

Bot two March 59. Weld advises purchase before Bureau.

Account four March long with open stops sell two thirty nine and two forty nine. Ledger credit twenty two hundred five dollars.

We beg to confirm above exchange of telegrams between us today.

Thanking you for this business and awaiting your further favors, we beg to remain—

Yours very truly,

THORN & MAGINNIS".

261 Q. Mr. Thorn, look at that and tell whether or not you didn't send that out to your customers the first thing in the morning and some times even before the market opened (Referring Ex. 70)

A. We sent out telegrams similar to that giving information on the market, from time to time.

Q. Early in the day?

A. Some times at night; no particular time.

Q. It was for the purpose of advising your customers of information on the market?

A. Keeping them advised as to the market.

Q. Were these telegrams sent out for the purpose of keeping them advised of things that affected the cotton market?

A. Yes.

"Ex. 71, J. K. P.

Confirmation of
Telegraphic Correspondence
Exchanged Between Mr. Fred Browne, Crowder, Okla.
and Thorn & Maginnis,
New Orleans, Dec. 8th, 1916.

Received

If market up buy two stop four twenty five loss.
Sell two Jan. ten loss stop four Mch. Fifteen loss.
Sell four March New Orleans.
If Long on Jan. stop Ans. Crowder wired early to stop.
Stop four March New Orleans Eighteen Eighty Five.

Sent

Opened lower weakness Liverpool; Ginnings about Sixty thousand larger expected. Undertone nervous.
Market opened lower; did nothing.
Please give new stop open Ginners 10,359.
Have entered fifteen point stop March, but instructions not clear January, please repeat.
Liquidation persistent on rallies, less confidence Government estimate sustaining small estimates; looks lower.
Sold four March 47
Sold two Jan. 19.10 per instructions Muskogee.
Bot four March 85
We beg to confirm above exchange of telegrams between us today.
Thanking you for this business and awaiting your further favors, we beg to remain—

Yours very truly,
THORN & MAGINNIS."

---

"Ex. 72, J. K. P.

New Orleans, Dec. 9th, '16.

Mr. Fred Browne,
Crowder, Okla.

262 Dear Sir:—

We beg to confirm telegrams today and enclose herewith the usual confirmation slip, which we trust you will find in order.

In accordance with your instructions, we have today entered for your account the following orders, which we understand are to be kept in force until either executed or cancelled:

Sell 200 B/C March @ 18.39 Stop
Sell 200 B/C March @ 18.49 Stop

With kindest regards and awaiting your further favors, we beg to remain—

Yours very truly,

SCC-CLB THORN & MAGINNIS."

---

"Ex. 73, J. K. P.

Confirmation of
Telegraphic Correspondence
Exchanged Between Mr. Fred Browne, Crowder, Okla.
and Thorn & Maginnis,
New Orleans, Dec. 11th. '16.

Received

Will be here Monday and Tuesday what times estimate come
Stop four March twenty five loss.
Buy four March NO stop fifteen loss.
Buy Five March New Orleans.
Enter stop five March New Orleans Twenty Five under next call after Bureau.

Sent

Sold two March 41 and two 39 stops. Government estimate out one o'clock our time.
Sorry, order already executed on stop and advised.
Please deposit Fifteen Hundred have Bank wire before Bureau.
Bot. four March 54. Bulls supporting but liquidation still coming out.
Bot five March 27. Please deposit additional to make seven dollars bale over report.
Sold four March 39 stop. Liquidation continues; market nervous over political conditions.
Have deposited Fifteen Hundred your credit City National Bank here.
March 70 after call. Entered stop Forty Five. Your limit 17.10 please deposit Thousand additional carry over.
We beg to confirm above exchange of telegrams between us today,

Yours very truly,

THORN & MAGINNIS".

Q. This "Received" that means received by you from Mr. Browne, those received by you are on this side, and those sent by you to him are on the right hand side?

A. That is right.

263 "Ex. 74, J. K. P.

Thorn & Maginnis,
Cotton Brokers,
New Orleans. Dec. 11/16

Mr. Fred Browne,
Crowder, Okla.

Dear Sir:—

We beg to confirm telegrams exchanged today and enclose herewith the usual confirmation slip, which we trust you will find in order.

In accordance with your last telegram, we have to-day entered for your account the following order, which we understand is to be kept in force until either executed or cancelled:

Sell 500 B/C March @ 17.45 Stop

If incorrect, please advise.

Awaiting your further favors, we beg to remain—

Yours very truly,

SCC-CLB (signed) THORN & MAGINNIS"

---

"Ex. 75, J. K. P.
Thorn & Maginnis,
Cotton Brokers,
New Orleans. Dec. 11/16.

Mr. Fred Browne,
Crowder, Okla.

Dear Sir:—

We beg to acknowledge your telegram of even date in accordance with which we have cancelled your open stop of the 11th. inst. to

Sell 500 B/C March @ 17.45

and have entered in its stead the following order which we understand is to be kept in force until either executed or cancelled:

Sell 500 B/C March @ 17.60 Stop

If incorrect, please advise.

Awaiting your further favors, we beg to remain—

Yours very truly,

SCC*CLB (signed) THORN & MAGINNIS"

---

264 "Ex. 76, J. K. P.

Confirmation of

Telegraphic Correspondence

Exchanged Between Mr. Fred Browne,

Crowder, Okla.

and Thorn & Maginnis,

New Orleans, Dec. 13/16.

Received

Buy two March New Orleans stop ten loss.

Buy four Jan. No Stop fifteen loss

Sell four May New Orleans stop fifteen loss.

Buy two March New Orleans.

Sent

Bot two March 21. Liverpool's action probably indicates serious consideration peace terms by allies.

Bot four Jan. 69

Sold four Jan. 54 stop. Nervous erratic market due politics, peace proposals, which Liverpool cables skeptical about.

Sold seven March Eighteen cents on stops, best could do on sudden break.

Sold Four May 05. Weight of Liverpool selling making itself felt.

Bot four May 18.20 on stop.

Bot two March Seventy Nine.

Bot two March Eighty Two.

We beg to confirm above exchange of telegrams between us to-day.

Thanking you for this business and awaiting your further favors, we beg to remain—

Yours very truly,

(signed) THORN & MAGINNIS"

"Ex. 77, J. K. P.

Thorn & Maginnis,
Cotton Brokers,

New Orleans, Dec. 13/16.

Mr. Fred Browne,
Crowder, Okla.

Dear Sir:—

We thank you for your orders of to-day and trust that our executions were satisfactory to you. We have experienced one of the most nervous and erratic markets we have ever seen, today, and indications are that while the present political undertainties exist, that they will continue so for some
265 time to come.

There are so many unsettling influences in the Cotton market at the present time, that it is very difficult to form a clear idea as to the course of prices in the near future. Foreign politics, as well as possible complications between America and Germany over the submarine issue, and now, the peace proposals from Germany, all are exerting their influences. While a good deal of the congested long interest has recently been liquidated, and the market now appears to be in a somewhat better technucal position, we doubt whether another bull campaign could be started with this year's crop as a basis, and rather think that speculation from now out, will receive its incentive more from the new crop than from the old one. Inasmuch as the xxxxx/aacreage is likely to be considerably increased as wel as the amount of fertilizers used, we are inclined to believe that in the long run, Cotton prices are more likely to go to lower than they are to higher levels.

Yours very truly,

"BT-CLB (signed) THORN & MAGINNIS"

---

"Ex. 78, J. K. P.

Confirmation of
Telegraphic Correspondence
Exchanged Between Mr. Fred Browne,
Crowder, Okla.
And Thorn & Maginnis,

New Orleans Dec. 14 16.
Sent

Kindly deposit Eight Hundred Dollars,
advise and have Bank wire.

We beg to confirm above telegram sent you to-day and now await your remittance.

The market to-day rules steadier, due to a favorable response from Liverpool and in sympathy with the Bullish Government figures on consumption published this morning. While the market has not become settled as yet due to pending political developments, and to the unsettled condition of the southern spot markets, fluctuations were less violent and the market seemed to develop more poise. There is considerably less outside speculative interest, however, and we are inclined to believe that the legitimate demand for spots from day to day, will prove to be the ruling factor, instead of the speculative demand that has been so pronounced of late.

Hoping to have the pleasure of serving you in the near future, we beg to remain—

Yours very truly,

CBT-CLB (signed) THORN & MAGINNIS"

266 "Ex. 79, J. K. P.

Confirmation of
Telegraphic Correspondence
Exchanged Between City National Bank,
Fort Smith, Ark.
And Thorn & Maginnis,

New Orleans Dec. 16/16

Received.

We confirm credit your account by
Fred Browne One Thousand Dollars.

We beg to acknowledge your telegram of even date advising the deposit of $1,000.00 to our credit by Mr. Fred Brown,

which amount we are to-day drawing for in favor of the Interstate Trust and Banking Co. of this City, and which draft, please honor upon presentation, and oblige,

Yours very truly,

(signed) THORN & MAGINNIS"

---

"Ex. 80, J. K. P.

Confirmation of
Telegraphic Correspondence
City National Bank,
Fort Smith, Ark.

Exchanged Between

And

Thorn & Maginnis,

New Orleans, Dec. 18/16

Received,

Please confirm Fred Browne deposit Thousand Dollars our credit to-day quick.

Sent

We confirm credit your account by Fred Browne to-day one Thousand Dollars.

We beg to confirm above exchange of telegrams between us to-day, and to advise having drawn draft in favor of the Interstate Trust and Banking Co. of this city for $1,000.00, amount deposited to our credit by Mr. Fred Browne.

Kindly honor this draft upon presentation, and oblige,

Yours very truly,

(signed) THORN & MAGINNIS"

Q. Mr. Thorn, in exhibit 77, letter dated December 13, 1916, there appear on the lower left-hand corner the initials CBT and CLB. I wish to ask you whose initials are CLB?

A. C. L. B. would probably be the stenographer.

267 Q. C. B. T., whose initials are those?

A. Would be mine.

Q. In a number of these exhibits we find the initials C. B. T. that means that you dictated the letter, does it?

A. Yes, sir.

Q. If the initials are S. C. C., that means that Mr. Coleman dictated it? A. Yes.

Q. The custom then, on that, was that the first initials on the lower left hand corner would be the person who dictated the letter? A. That is right.

Q. And then the initials following would be the stenographer who wrote the letter? A. Yes, sir.

Mr. McDonough:

268 "Ex. 81, J. K. P.

Confirmation of
Telegraphic Correspondence
exchanged between Mr. Fred Browne,
Crowder, Okla.
and Thorn & Maginnis,
New Orleans. Dec. 18th. '16.

Received.

Buy two March New Orleans have deposited One thousand your credit City National Bank here.

Sent

Many feeling something may develop peace. Liverpool cables better spot market. No pressure liquidate futures. Hamburg American Line issued circular soliciting freight after peace.

Kindly deposit Eighteen Hundred Dollars, advise and have bank wire.

Please give our call prompt answer before close.

Bot two March 70

We beg to confirm above exchange of telegrams between us to-day.

Hoping to have the pleasure of serving you soon again, we beg to remain—

Yours very truly,

(signed) THORN & MAGINNIS"

"Ex. 82, J. K. P.

Thorn & Maginnis,

Cotton Brokers.

New Orleans. Dec. 19th. '16.

Mr. Fred Browne,
Crowder, Okla.

Dear Sir:—

We beg to confirm telegrams exchanged between us to-day, as per enclosed confirmation.

The market suffered a very severe decline to-day and while we received advise of deposit of $1,500.00 from the City National Bank of your City, with which we have credited your account, owing to the heavy decline, this was insufficient to protect your account, and we thereford, promptly called you for $4,000.00 additional. Inasmuch as we received no reply from this call up to the close of the market, and as the amount of margin remaining in our hands was insufficient to protect your 800 bales, in the very unsettled and nervous condition of the market, and, as we did not hear from you, we were forced to reduce your account by selling

400 B/C March @ 16.88

at the close, to reduce your line to a point that we could carry same over night. While this still, does not give us the full margin necessary under present conditions, it was our desire to do everything possible that we could for you, and
269 did not wish to close out your account if it could be avoided.

We trust that you will let us have the additional margin necessary to protect contracts remaining open, as soon as possible, and in the meantime, trust that our action of to-day meets with your approval.

Assuring you that we did everything we could, under the circumstances, we beg to remain—

Yours very truly,

CBT-CLN (signed) THORN & MAGINNIS"

"Ex. 83, J. K. P.

Confirmation of
Telegraphic Correspondence
exchanged between Mr. Fred Browne,
Crowder, Okla.
and Thorn & Maginnis,

New Orleans. Dec. 20th. 1916.

Sent.

Kindly deposit Eighteen Hundred Dollars, advise and have Bank wire.

We beg to confirm above telegram sent you to-day and are now advised by the City National Band that you have deposited $1,200.00 to our credit for which please accept our thanks.

Yours very truly,

(signed) THORN & MAGINNIS"

---

"Ex. 84, J. K. P.

Confirmation of
Telegraphic Correspondence
exchanged between Mr. Fred Browne,
Crowder, Okla.
and Thorn & Maginnis,

New Orleans. Dec. 16/16.

Received.

Buy two New Orleans March have deposited One Thousand your credit City National Bank.

Sent

Spot news moderately bullish, politics the principal influence at moment; statement Russia and Italy attracting some attention.

Bot two March 94. Spot news bullish politics the principal influence at moment.

We beg to confirm above exchange of telegrams between us to-day.

Awaiting your further favors and referring you to our Weekly Market Letter herin enclosed, we beg to remain—

Yours very truly,

(signed) THORN & MAGINNIS."

---

"Ex. 85, J. K. P.

270 Confirmation of
Telegraphic Correspondence
exchanged between Mr. Fred Browne,
Crowder, Okla.
and Thorn & Maginnis,
New Orleans. Dec. 22/16.

Received.

Wire Ledger credit.

Sell two March New Orleans stop five loss have deposited One Thousand City National.

Stop two March Sixteen cents.

Sent.

Your ledger credit Thirty Dollars. New York wires drastic liquidation about over and short interest created.

Sold two March 05

Bot two March Sixteen cents stop. Still unsettled but looks healthier than heretofore.

We beg to confirm above exchange of telegrams between us today.

Awaiting your further favors, we beg to remain—

Yours very truly,

(signed) THORN & MAGINNIS"

---

"Ex. 86, J. K. P.

Confirmation of
Telegraphic Correspondence
exchanged between City National Bank
Ft. Smith, Ark.
and Thorn & Maginnis,
New Orleans, Dec. 19th. '16

Received.

We confirm credit Fred Browne for your account Fifteen Hundred Dollars.

Sent.

Please confirm Browne's deposit fifteen hundred Dollars quick. Would thank you to do so all times promptly.

We beg to confirm above exchange of telegrams between us today and to advise that we are today drawing draft in favor of the Interstate Trust & Banking Co. of this city for $1,500.-00, amount deposited to our credit by Mr. Fred Browne.

Kindly honor same upon presentation, and oblige,

Yours very truly,

(signed) THORN & MAGINNIS"

---

271 "Ex. 87, J. K. P.

Confirmation of
Telegraphic Correspondence
exchanged between Mr. Fred Browne,
Crowder, Okla.
and Thorn & Maginnis,
New Orleans Dec. 19th. '16.

RECEIved.

Have deposited your credit City Nat'l here Fifteen Hundred mail statement

Sent.

Kindly deposit Four Thousand Dollars, advise and have Bank wire.

Please deposit Two Thousand additional and have Bank confirm at once. Lloyd George speech expected at ten o'clock of greatest importance.

No reply call, insufficient margin carry full line over compelled sell four March 86 on close, reduce in order carry over.

We beg to confirm above telegram sent you to-day.

Yours very truly,

(signed) THORN & MAGINNIS"

---

"Ex. 88, J. K. P.

Confirmation of
Telegraphic Correspondence
exchanged between City National Bank,
Fort Smith, Ark.
and Thorn & Maginnis,

New Orleans. Dec. 20th. '16.

Received.

We confirm credit your account Fred Browne Twelve Hundred Dollars.

We beg to acknowledge your telegram of even date advising the deposit of $1,200.00 to our credit by Mr. Fred Browne, which amount we are to-day drawing for in favor of the Interstate Trust and Banking Co. of this City and which draft please honor upon presentation, and oblige,

Yours very truly,

(signed) THORN & MAGINNIS"

---

"Ex. 89, J. K. P.

Thorn & Maginnis,
Cotton Brokers,

New Orleans. Dec. 20th. '16.

Mr. Fred Browne,
Crowder, Okla.

Dear Sir:—

We beg to confirm telegrams passed between us today. There was a misunderstanding in reporting the purchase of 100 B/C March at Eighty two to you, as one of our floor men who wished to give you some information on the market, did not know that the other one had already report- the purchase to you. Our later telegram asking you to cancel report of last purchase of 100 B/C March at 82. no doubt reached
272 you promptly, and we trust that this matter occasioned you no serious inconvenience.

In accordance with your wire instructions of today we are entering for your account the following stop order, which we understand is to be kept in force until either executed or cancelled:

Sell 500B/C March @ 16.40

If incorrect, please advise.

Awaiting your further favors, we beg to remain,

Yours very truly,

CBT-CLB (signed) THORN & MAGINNIS"

---

"Ex. 90, J. K. P.

Thorn & Maginnis,
Cotton Brokers,
New Orleans Dec. 23/16.

Mr. Fred Browne,
Crowder, Okla.

Dear Sir:—

We beg to confirm telegrams passed between us today and enclose herewith the usual confirmation slip, which we trust you will find in order.

We duly received your telegram to place stop on
200 B/C March Bought @ 16.35
and later received your instructions to cancel the previous, and in its stead to enter order to
Sell 200 B/C March @ 16.40 Stop

These later instructions will receive our very best attention, and in accordance therewith, we have entered for your account the following order, which we understand is to be kept in force until either executed or cancelled:

Sell 200 B/C March @ 16.40

If incorrect, please advise.

The market during the week has been subjected to rather heavy general liquidation and short selling under the pressure of which, values have declined about $6.50 a bale. The incentive for the liquidation was mostly due to the inference from the statement by the Secretary of State that our Country was verging on the state of war and this had the effect of shaking confidence in almost everything. The market was more or less demoralized during the greater part of the week, but since yesterday, a better tone has been in evidence and final prices today show a net decline of about $4.00 a bale from the lowest point reached. Sentiment as a whole, is rather bullish for ultimate results, but the feeling seems to be that political developments in the immediate future, will likely dominate the course of values. It is likely, however, that for

the time being, any display of strength will likely encourage renewed selling.

With kindest regards, we beg to remain—

Yours very truly,

SCC-CLB (signed) THORN & MAGINNIS"

273 "Ex. 91, J. K. P.

Confirmation of
Telegraphic Correspondence
exchanged between Mr. Fred Browne,
Crowder, Okla.
and Thorn & Maginnis,
New Orleans. Dec. 23/16

Received

Buy two March No stop five loss

Sent

Distressed Cotton seems liquidated depends politics and spots; after a good rally may expect slow liquidation as market comes under influence new crop preparations.

Bot one March Sixteen Thirty and One Thirty One; shorts covering pending Holiday.

We beg to confirm abowe exchange of telegrams between us today.

Awaiting your further favors, we beg to remain—

Yours very truly,

(signed) THORN & MAGINNIS"

"Ex. 92, J. K. P.

Thorn & Maginnis,
Cotton Brokers,

New Orleans. Dec. 29/16/

Mr. Fred Browne,
Crowder, Okla.

Dear Sir:

We beg to confirm telegrams passed between us today. We wish to refer you to your wire asking why your stop order to

Sell 200 B/C May @ 17.19

was executed at 17.05 instead of nineteen as your order read.

Beg to say that as this limit was reached, the market was subjected to another one of those fainting spells which have so common of late, and as we started to execute your order at nineteen, there was a break of twenty points between trades in New York as received here. Our Mr. Coleman who was at the ring side at the time, endeavored in every possible way to sell at about your limit, but, owing to the fact that New York had made such a serious decline, it was impossible to get a bid until the market reached 17.05 for May, at which price, your stop order was executed.

We regret exceedingly the fact that we could not sell your Cotton at your limit, but the conditions existing at the time, were those over which we had no control, as every broker at the ring side found himself in the same position, that was, that there were no bids until the two markets had somewhat adjusted their differences.

We assure you that we at all times, attempt to give your business the closest attention possible, and up to this time have rather prided ourselves on the fact that we have gotten through the recent wide fluctuations, without over-running any of your stop orders very much. We trust there-fore, that you will appreciate our position in the present instance,
274 and realize that it was not due to any oversight or carelessness on our part; but, as said before, to conditions over which we had no control.

Thanking you for past favors, and hoping to have the pleasure of serving you soon again in the near future, we beg to remain—

Yours very truly,

CBT-CLB (signed) THORN & MAGINNIS"

---

"Ex. 93, J. K. P.

Confirmation of
Telegraphic Correspondence
exchanged between Mr. Fred Browne,
Crowder, Okla.
and Thorn & Maginnis,
New Orleans. Dec. 29

Received

Buy two May New Orleans stop ten.

Buy two May New Orleans stop ten loss

Should have got out at nineteen on two
May why 05

Sell two May stop ten loss

Sent.

Bot two May 29

Now said 85 percent includes Cotton munitions, food. Think export situation been exaggerated.

Bot two May 32; placing stop sell 22.

Sold two May 17.05 on stop
Sold two " 17.22 on stop

Owing to twenty point drop New York impossible to do better on nineteen stop.

Sold two May 84.

Bot two May 94 on stop.

We beg to confirm above exchange of telegrams between us to-day.

Awaiting your further favors, we beg to remain—

Yours very truly,

(signed) THORN & MAGINNIS."

---

"Ex. 94, J. K. P.

Thorn & Maginnis,
Cotton Brokers,

New Orleans. Dec. 30th. '16

Mr. Fred Browne,
Crowder, Okla.

Dear Sir:—

275 We beg to confirm telegrams exchanged to-day and enclose herewith the usual confirmation slip which we trust you will find in order.

In accordance with your instructions, we have entered for your account the following order, which we understand is to be kept in force until executed or cancelled:

Sell 200 B/C May @ 17.04 stop

If incorrect, please advise.

The market during the week has been most erratic and values have been subjected to most violent fluctuations. For the period mentioned, however, a net advance of about thirty points has been recorded. Sentiment tonight seems more or less mixed as to the course of prices in the immediate future. Political conditions seem to be the dominant factor just now, but there is a feeling that the intrinsic worth of Cotton justifies this, or even higher levels, but much will depend upon developments after the turn of the New Year. For tthe time being, it looks as though a traders market would obtain with daily developments furnishing the basis for price changes.

Awaiting your further favors, we beg to remain—

Yours very truly,

(signed) THORN & MAGINNIS"

---

"Ex. 95, J. K. P.

Confirmation of
Telegraphic Correspondence
exchanged between Mr. Fred Browne,
Crowder, Okla.
and Thorn & Maginnis,

New Orleans. Dec. 30'16

Received.

Buy two May New Orleans wire ledger credit stop fifteen loss.

Sent.

Nervous Holiday market. Modification embargo Eastern Roads helping movement Cotton.

Bot two May 17.19. Ledger credit Thirty One Hundred & Twenty Five Dollars.

We Beg to confirm above exchange of telegrams between us today.

We beg to confirm above exchange of telegrams between the past year and express the hope that the New Year will be one of much Health, Happiness and Prosperity.

Yours very truly,

(signed) THORN & MAGINNIS"

---

276 "Ex. 96, J. K. P.

Confirmation Of Telegraphic Correspondence

exchanged between Mr. Fred Browne,
Crowder, Okla.

and Thorn and Maginnis,
New Orleans Jan 3rd. '17.

Received.

Buy two May New Orleans stop twenty loss.

Buy two May stop fifteen loss.

Sent

Bot two May 44

Sold two May 24 stop. Selling by Liverpool before close affected American markets.

Bot two May twenty Nine.

We beg to confirm telegrams exchanged between us today and enclose herewith the usual confirmation slip, which we trust you will find in order.

In accordance with your instructions, we have today entered for your account the following stop order which we understand is to be kept in force until executed or cancelled:

Sell 200 B/C May @ 17.14 Stop

If incorrect, please advise.

Awaiting your further favors, we beg to remain—

Yours very truly,

(signed) THORN & MAGINNIS"

---

"Ex. 97, J. K. P.

Confirmation Of Telegraphic Correspondence

exchanged between Mr. Fred Browne,
Crowder, Okla.

and Thorn and Maginnis,
New Orleans Jan 4th. '17

Received.

Buy two May New Orleans stop fifteen loss. loss.

Sent.

Featureless market. Traders sold on report Nat'l Ginners Eleven one later covered reported improvement interior spots.

Bot two May 34. Shreveport reports sale 1700 bales to Carolina mills basis eighteen cents.

We beg to confirm above exchange of telegrams between us today.

The market was rather featureless to-day and there was a noticeable absence of outside interest, Traders, however, continue bearish and sold the market quite freely shortly
277 after the opening, on Jan. 1st. This selling failed to bring out any general selling and after it had spent its force, these same traders covered freely throughout the rest of the day on reports from the Interior that spots were showing a hardening tendency. Spot sales are still below normal, although they show a tendency to increase daily, while present quotations are well maintained throughout the South. The market is in a position to respond promptly to any favorable influence and if sales are to be made, we would only make them on advances. We continue to believe, however, that purchases on soft spots will prove to be the most profitable operation for the immediate future.

Awaiting your further favors, we beg to remain—

Yours very truly,

CBT-CLB (signed) THORN & MAGINNIS"

---

"Ex. 98, J. K. P.

Thorn & Maginnis,
Cotton Brokers.

New Orleans. Jan. 4th. '17.

Mr. Fred Browne,
Crowder, Okla.

Dear Sir:

We beg to confirm telegrams exchanged today and enclose herewith the usual confirmation slip, which we trust you will find correct.

In accordance with your instructions, we have entered for your account the following stop order, which we understand is to be kept in force until executed or cancelled:

Sell 200 B/C May @ 17.19 Stop

If incorrect please advise.

Awaiting your further favors, we beg to remain—

Yours very truly,

(signed) THORN & MAGINNIS"

---

"Ex. 99, J. K. P.

Confirmation Of Telegraphic Correspondence

exchanged between Mr. Fred Browne,
Crowder, Okla.
and Thorn and Maginnis,
New Orleans, Jan 5th. '17.

Received.

Buy four New Orleans stop twenty loss.

Sent.

National Ginners eleven naught four.

xxxxx Better demand Liverpool spot markets steadier.

Bot four May 73.

We beg to confirm telegrams exchanged between us today and enclose herewith the usual confirmation slip, which we trust you will find in order.

In accordance with your instructions, we have today entered for your account the following order, which we understand is to be kept in force until executed or cancelled:

278 Sell 400 B/C May @ 17.53 Stop

Opening prices this morning reflected the strength of Liverpool and almost immediately assumed an advancing tendency on scattered short covering and buying on the belief that the improved technical position of the market, as well as the improvement in the demand for Spots, were bound to cause an enhancement in values. The market ruled very steady throughout the day, but there is still an absende of outside interest, and while conditions, as they now appear, warrant the expectation of a higher level, yet, it is well to take into consideration the possibility of unfavorable political developments. Without this, a higher level is likely, but there is much uncertainty as regards the future political situation.

Yours very truly,

SCC-CLB (signed) THORN & MAGINNIS"

---

"Ex. 100, J. K. P.

Confirmation Of Telegraphic Correspondence
exchanged between City National Bank,
Ft. Smith, Okla.
and Thorn and Maginnis.
New Orleans Jan. 6th. '17.

Received.

We confirm credit by Fred Browne for your account Two Thousand Dollars.

We beg to acknowledge your telegram of even date advising the deposit of $2,000.00 to our credit by Mr. Fred Browne, which amount we are today drawing for in favor of the Interstate Trust & Banking Co. of this City, and which draft please honor upon presentation, and oblige,

Yours very truly,

(signed) THORN & MAGINNIS"

---

"Ex. 101, J. K. P.

Confirmation Of Telegraphic Correspondence.

exchanged between Mr. Fred Browne.
Ft. Smith, Ark.
and Thorn and Maginnis,
New Orleans Jan. 7th. '17.

Received.

Owing increased Line and Monday Holiday, must have Five Dollars bale overnigh. Kindly deposit Two Thousand Additional and have Bank wire or instruct before close.

Buy Five May New Orleans stop twenty loss.

Sent.

Improved spot demand and hope peace stimulating factors. Technical position sound.

Have placed Two Thousand your credit City National Bank here.

279 Bot Five May Eighteen Cents.

We beg to confirm above exchange of telegrams between us today.

In accordance with your instructions, we have to-day entered for your account the following order, which we understand is to be kept in force until executed or cancelled:

Sell 500 B/C May @ 17.80 Stop

If incorrect, please advise.

Awaiting your further favors, we beg to remain—

Yours very truly,

(signed) THORN & MAGINNIS"

Q. I will ask you if these telegrams are not erroneously placed.

A. They look like they are, yes.

---

"Ex. 102, J. K. P.

Tel Confirmation Of Telegraphic Correspondence

exchanged between Mr. Fred Browne,
Ft. Smith, Ark.

and Thorn and Maginnis,
New Orleans Jan. 8th '17.

Received.

Buy Five May New York stop twenty loss.

Sent

Bot Five May 72 New York entered stop fifty two.

We beg to confirm above exchange of telegrams between us to-day.

Awaiting your further favors, we beg to remain—

Yours very truly,

(signed) THORN & MAGINNIS"

---

"Ex. 103, J. K. P.

Confirmation Of Telegraphic Correspondence

exchanged between Mr. Fred Browne,
Fort Smith, Ark.

and Thorn & Maginnis,
New Orleans Jan. 9th.'

Received.

Buy five May New Orleans stop twenty loss.

Buy Five New York July stop twenty loss wire ledger credit.

Buy Five New Orleans May stop twenty loss.

Sent.

Bot Five May 29

Sold ten May 18.20 stop.

280 Selling at advance increasing, while may work some higher, seems sufficient for present. Ginnings as expected.

New York wires trade good buyer on decline, profit taking and Liverpool selling caused decline, tone steadying.

Bot One July 74 Four 77 New York. Entered stop Fifty Five. Ledger credit Five Thousand One Hundred and Forty Five Dollars last night.

Bot Five May 62

We beg to confirm above exchange of telegrams between us to-day, and enclose herewith the usual confirmation slip, which we trust you will find correct.

In accordance with your instructions, we have today entered for your account the following orders, which we understand are to be kept in force until executed or cancelled:

Sell 500 B/C May New Orleans @ 18.42 Stop

Sell 500 B/C May " " @ 18.09 "

" 500 B/C May " " @ 18¢ "

" 500 B/C July New York @ 18.55 Stop

Yours very truly,

SCC-CLB (signed) THORN & MAGINNIS"

"Ex. 104, J. K. P.

Confirmation Of Telegraphic Correspondence

exchanged between Mr. Fred Browne,
Fort Smith, Ark.
and Thorn & Maginnis,
New Orleans. Jan. 10th '17.

Received.

Stop ten New Orlenas Eighteen Twenty Five Ten New York Eighteen Sixty

Stop Ten New Orleans May Forty Five Five New York May and July Eighty

Wire ledger credit and mail statement.

Sent

Sold Five May 35 on 42 stop on opening

Still two sided Market. Large Eastern operators selling; advance bit rapid for permanency.

New York wires trade buying on this decline Good outside demand also Wall St. principal supply. Expect market to improve.

281 Sold ten May 45 on stop here.

Sold Five May 80 Two July 80 and

Three 79 New York On Stops.

Ledger credit Ninety One Hundred and Sixty Five Dollars with all contracts closed. Mailing statement as requested.

We beg to confirm telegrams exchanged between us today, and in accordance with your request, we herewith hand you statement of this date, showing a balance to your credit of $9,165.00.

As we wired you this morning, the market looked as though it had advanced rather too fast to hold. There was no special news to cause the decline to-day beyond the fact that freight engagements to Liverpool were again withdrawn for the time being. Former large bull operators were reported as against the market at the present time, and sentiment generally, seemed to be less favorable to a further advance. While spots have been quoted up, sales as yet, are not large and we would prefer to see them larger before advising purchases at existing levels.

Trusting that our handling of your account has been to your satisfaction and that we may have the pleasure of serving you soon again in the near future, we beg to remain—

Yours very truly,

CBT—CLB (signed) THORN & MAGINNIS"

---

"Ex. 105, J. K. P.

Confirmation of

Telegraphic Correspondence

exchanged between Mr. Fred Browne,
Fort Smith, Ark.

and Thorn & Maginnis,
New Orleans. Jan. 11/17

Received.

Buy One May New Orleans stop fifteen loss.

Sell One May New Orleans stop fifteen loss.

Buy three May New Orleans stop two fifteen, loss.

Stop three May Eighty.

Stop Three May Ninety.

Sent.

Bot One May 03

Sold One May 88 On stop

Uncertain political developments likely have bad effect. While may go some higher, think sale on bulges.

282 Sold One May 89

Bot two May 04 One 05. Placing stop on three to sell two 89 One 90. If incorrect answer quick.

Bot One May 18.04 on stop.

Sold three May 90 stop.

We beg to confirm above exchange of telegrams today.

Thanking you for this business and awaiting your further favors, we beg to remain—

Yours very truly,

(signed) THORN & MAGINNIS"

---

"Ex. 106, J. K. P.

Thorn & Maginnis,

Cotton Brokers.

New Orleans, Jan. 12/17

Mr. Fred Browne,
Fort Smith, Ark.

Dear Sir:—

After the close of the market to-day, your draft for $5,000.00 on the Merchants National Bank of Fort Worth, Texas, was presented to us and duly paid. Inasmuch, however, as this did not leave your account with sufficient margin in hand to margin your 800 bales of long cotton, in accordance with our present requirements of $6.00 per bale, we wired you to this effect and asked you to kindly deposit $1,600.00 in order that your contracts might be margined in accordance with our present requirements, which we trust reached you promptly, and wish to thank you in advance for your prompt attention to same, which, we feel sure that you will give to our request.

While the spot markets have been quoted higher of late, the market does not seem to have much breath and sales continue small, and we are doubtful as to whether much Cotton could be sold at existing levels. As far as the future market goes, it appears to us to be unnaually artificial and professional. This market will not stand much selling and when declines set in, they are rapid and severe. We believe that the statistical position of the market has been fully aired, and while it is admittedly strong, ruling prices would seem to discount known facts, and we are inclined to believe, that as we approach the new planting season, which is now not very far off, that these influences will be of a bearish rather than of a bullish nature. Politics of course, will continue to be a disturbing influence, and should anything unfavorable develop in our Foreign relations, we believe it will seriously affect Cotton prices.

Awaiting your further favors, we beg to remain—

Yours very truly,

CBT-CLB (signed) THORN & MAGINNIS"

283 Ex. 107, J. K. P.

Confirmation of

Telegraphic Correspondence

exchanged between Mr. Fred Browne,

Fort Smith, Ark.

and Thorn & Maginnis,

New Orleans. Jan. 13/17

Received.

Stop eight May Seventeen Seventy.

Sent.

Largely professional market, supply floating contracts limited, outside trading small erratic and nervous.

Kindly deposit Eight Hundred Dollars, advise and have Bank wire.

Sold One May 70 and seven 65 on stop,

Best could do on panicky market.

We beg to confirm telegrams passed between us to-day, and regret that we were unable to sell more of your May contracts at your stop limit of 70. It is probably difficult for one at a distance to fully appreciate the character of markets that we are experiencing at the present time. As an illustration, two minutes and a half before the market closed, May was selling at 17.60 or above, and it seemed reasonable to suppose that your stop would not be reached, but between then and the close, there was an avalanche of offerings and it was impossible to get a bid for the others until 65 was reached, and immediately after that, it sold at 62, at about which price it closed. We simply mention this to show you that we were watching your account closely and in spite of this, it was impossible to sell at your limit.

Trusting that you will appreciate the erratic conditions of the market and the difficulties in which the brokers find themselves in executing stop orders in such markets, we beg to remain—

Yours very truly,

CBT-CLB (signed) THORN & MAGINNIS"

"Ex. 108, J. K. P.

Confirmation of
Telegraphic Correspondence
exchanged between Mr. Fred Browne,
and Fort Smith, Ark.
and Thorn & Maginnis,
New Orleans, Jan. 12th. '17

Received.

Buy Five New Orleans May

Buy Five May Sell five Oct. N. O.

Buy Three New Orleans May.

Sent.

Politics dominating factor, no immediate prospect peace.

Castles wires weak longs out.

284 Bot Five May 15

Bot Five May 18.08

Sold Five Oct. 16.82.

Bot three May 08. Working on May Oct. order trying get proper difference.

Draft just received. To meet same and protect open contracts present requirements, necessary you deposit sixteen hundred dollars promptly and have bank wire. Answer.

We beg to confirm above exchange of telegrams between us to-day.

Awaiting your further favors, we beg to remain—

Yours very truly,

(signed) THORN & MAGINNIS"

"Ex. 109, J. K. P.

Confirmation of
Telegraphic Correspondence
exchanged between Mr. Fred Browne,
Fort Smith, Ark.
and Thorn & Maginnis,
New Orleans, Jan. 18th '17.

Sent

Recoveries meet fresh liquidations likely continue so. Weather favorable.

We beg to confirm above telegram sent you to-day which we trust reached you promptly and proved of interest.

Opening prices this morning reflected the strength of Liverpool and after early weakness, induced by scattered liquidation, the market assumed a steadier tone and in the late trading, recorded a net advance of almost a dollar a bale. Trading to-day, was largely confined to the professional element, but the character of news from spot sellers seems to be better and this had the effect of stimulating bullish confidence. The market, however, continues rather nervous and the belief is freely expressed that so long as political complications are the dominant factor, that it will be difficult to bring about a sustained improvement.

Yours very truly,

(signed) THORN & MAGINNIS"

---

"Ex. 110, J. K. P.

Confirmation of
Telegraphic Correspondence
exchanged between Mr. Fred Browne,
Fort Smith, Ark.
and Thorn & Maginnis,
New Orleans, Jan. 23/17

285 Received.

Stop Five Fifty and Four Forty Five

Stop Four Fifty Five.

Buy Ten May

Sent.

Small market Texas wires spot demand increasing. Weather favorable sentiment mixed.

Sold Five May 16.50 on stop.

Sold four May 55 stop. Market flooded with reports better spot demand, but meets fresh selling all advances.

Bot Five May 73 and 74.

Kindly deposit One Thousand Dollars, advise and have Bank wire.

We beg to confirm above exchange of telegrams between us to-day.

Thanking you for this business and at all times glad to serve, you, we beg to remain—

Yours very truly,

(signed) THORN & MAGINNIS"

---

"Ex. 111, J. K. P.

Confirmation of
Telegraphic Correspondence
Exchanged between City National Bank,
Fort Smith, Ark.
and Thorn & Maginnis,

New Orleans, Jan. 23/17.

Received.

Fred Browne has placed Fifteen Hundred dollars your credit.

We beg to acknowledge your telegram of even date advising the deposit of $1,500.00 to our credit by Mr. Fred Browne, which amount we are to-day drawing for in favor of the Interstate Trust & Banking Company of this City, and which draft please honor upon presentation, and oblige,

Yours very truly,

(signed) THORN & MAGINNIS"

---

"Ex. 112, J. K. P.

Confirmation of
Telegraphic Correspondence
exchanged between Mr. Fred Browne,
Fort Smith, Ark.
and Thorn & Maginnis,

New Orleans, Jan. 23rd. 17

Received.

Buy two May stop two fifteen loss

Buy Two May stop seven fifteen nineteen

Buy Two May

286 Sent.

Ginnings as expected, somewhat better undertone on less political anxiety Reactions probable, but likely prove temporary.

Bot two May 49

Sold two May 34 on stop.

Bot two May 47

Bot two May 69

We beg to confirm telegrams passed between us today and enclose herewith the usual confirmation slip, which we trust you will find in order.

In accordance with your instructions, we have today entered for your account the following order, which we understand is to be kept in force until either executed or cancelled:

Sell 700 B/C May @ 15.90 Stop

If incorrect, please advise.
Awaiting your further favors, we beg to remain—

Yours very truly,

(signed) THORN & MAGINNIS"

---

"Ex. 113, J. K. P.

Confirmation of
Telegraphic Correspondence
exchanged between Mr. Fred Browne,
Fort Smith, Ark.
and Thorn & Maginnis,
New Orleans, Jan. 25/17.

Received.

Buy two May

Buy four deposited Two Thousand your credit City National.

Sent.

Political influences temporarily less potent, better feeling spots, speculation dormant. Advances meet fresh liquidations

Bot two May 83

Bot four May 84

We beg to confirm above exchange of telegram between us to-day.

We are in receipt of a telegram from the City National
287 Bank of your City advising that you have deposited $2,000.00 to our credit, for which please accept our thanks.

Always pleased to serve you, we beg to remain—

Yours very truly,

(signed) THORN & MAGINNIS"

---

"Ex. 114, J. K. P.

Market Letter.

Thorn & Maginnis,

Cotton Brokers,

New Orleans. Jan. 23 '17

Dear Sirs:—

Opening prices this morning only partially reflected the strength of Liverpool and after an advance of about ten points, the market assumed a sagging tendency, with selling more or less general. This pressure brought about a decline of about 35 points from the highest point reached, but there seemed to

be a fairly good demand in evidence at below 35 for May, and later, in the absence of renewed offerings, the market assumed an advancing tendency with final prices to-night within about ten points of the highest of the day. There was no particular news as regards the situation in Cotton, but the large exports excited some comment and on this, a better feeling developed. Sentiment tonight, seems decidedly mixed as to the course of prices in the immediate future, but as a whole the belief seems to be that political developments will dominate the situation during the immediate future.

Contracts in the New Orleans market closed as follows:

| | |
|---|---|
| January | 16.44 |
| March | 16.49 |
| May | 16.64 |
| July | 16.75 |
| September | 15.90 |
| October | 15.68 |
| December | 15.81 |
| Middling | 16.81 |

Yours very truly,

THORN & MAGINNIS.

---

"Ex. 115, J. K. P.

Confirmation of
Telegraphic Correspondence
exchanged between Mr. Fred Browne,
Fort Smith, Ark.

and

Thorn & Maginnis,
New Orleans

Jan. 27/17/

Received

Buy two May New Orleans

Sent

Bought two May 06

We beg to confirm above exchange of telegrams between us to-day.

Thanking you for this business and awaiting your further favors, we beg to remain,

288 Yours very truly,

(signed) THORN & MAGINNIS"

---

"Ex. 116, J. K. P.

Confirmation of
Telegraphic Correspondence
exchanged between Mr. Fred Browne,
Fort Smith, Ark.
and Thorn & Maginnis,

New Orleans. Jan. 26/17

Sent

While market showing better tone, business actual greatly restricted, broad demand absent, market thin.

New York wires rumored Germany likely come out with reasonable peace terms next two days.

We beg to confirm above telegrams sent you to-day which we trust reached you promptly and proved of interest.

Opening prices this morning reflected the strength of Liverpool and soon recorded further improvement on scattered buying largely short covering, induced by the reports of a better spot demand. This forced the market to nearly 17¢ for May, but as has been usual in the recent past, periods of strength met fresh selling with the result that final prices to-night are only about ten pts. higher than those of yesterday. Sentiment as a whole continues to be rather mixed, with the belief growing that it will require a very active spot demand to bring about a sustained advance.

Yours very truly,

(signed) THORN & MAGINNIS"

---

"Ex. 117, J. K. P.

Confirmation of
Telegraphic Correspondence
exchanged between Mr. Fred Browne,
Fort Smith, Ark.
and Thorn & Maginnis,
New Orleans. Jan. 29, '17

Received.

Buy Four May

Stop Ten Eighty Five and Ten Seventy Five.

Sent.

Market still unsettled, easily influenced either way. Some disappointed over Kaiser's speech. Weather satisfactory.

Bought Four May 08. Please deposit Two Thousand additional and have Bank confirm promptly.

Unless stops reached, margin hand insufficient carry over night.

Kindly deposit Three Thousand or instruct reduce line before close. Answer.

289 Reliable friend from Waco wires spot holders seem more disposed to sell to-day.

Sold Ten May 16.85 on stop.

Bot Three May Eighty Eight.

We beg to confirm above exchange of telegrams between us to-day and enclose herewith the usual confirmation slip, which we trust you will find correct.

In accordance with your instructions contained in your last telegram, we have to-day entered for your account the following order, which we understand is to remain in force until executed or cancelled:

Sell 1, 500 B/C May 16.90 Stop

If incorrect, please advise.

Yours very truly,

(signed) THORN & MAGINNIS"

"Ex. 118, J. K. P.

Confirmation of
Telegraphic Correspondence
exchanged between Mr. Fred Browne,
Fort Smith, Ark.
and Thorn & Maginnis,

New Orleans. Jan. 15/17

Received.

Sell Five May

Sent

Sold Five May 17.02. Stale liquidation good rains belt. Undertone poor looks lower.

We beg to confirm above exchange of telegrams between us to-day.

Thanking you for this business and awaiting your further favors, we beg to remain—

Yours very truly,

(signed) THORN & MAGINNIS"

Q. Mr. Thorn, can you look at that and tell which one of those telegrams was sent first and which was received first. I refer to the telegram you received which says "Sold 5 May 17.02" from Fred Browne, and then tell which one of them came to you first? A. No, I couldn't say.

"Ex. 119, J. K. P.

Confirmation of
Telegraphic Correspondence
Exchanged between Mr. Fred Browne, Fort Smith, Ark.
and Thorn & Maginnis,

New Orleans, Jan. 17th. '17

Sent

290 Peace influences subsiding. Public less interested, seems sale on rallies for present.

We beg to confirm above telegram sent you today which we trust reached you promptly and proved of interest.

Yours very truly,

THORN & MAGINNIS".

---

"Ex. 120, J. K. P.

New Orleans, Jan. 31/17.

Mr. Fred Browne,
Fort Smith, Ark.

Dear Sir:—

We beg to confirm telegrams exchanged today and enclose herewith the usual confirmation slip, which we trust you will find correct.

In accordance with your instructions, we have today entered for your account the following stop order, which we understand is to be kept in force until either executed or cancelled:

Sell 300 B/C May @ 17.03 Stop

If incorrect, please advise.

Awaiting your further favors, we beg to remain—

Yours very truly,

THORN & MAGINNIS".

Mr. McDonough: I desire to offer statement from Thorn & Maginnis dated October 19, 1916.

Q. Is that a statement from your office, Mr. Thorn?
A. Yes, it seems to be.

"Ex. 121, J. K. P.

Thorn & Maginnis
Cotton Brokers
209 Varieties Place.

New Orleans, Oct. 19, 1916.

Mr. Fred Browne,
Crowder, Okla.

We beg to confirm the following transactions in cotton for future delivery made this day for your account and risk, subject to the rules and regulations of the New Orleans Cotton Exchange and United States Cotton Futures Act, Section Five.

| Bought | | | | Sold | | | |
|---|---|---|---|---|---|---|---|
| Bales | Delivery | Price | Remarks | Bales | Delivery | Price | Remark |
| | | | | 500 | Jan | 17.87 | |

On all marginal business we reserve the right to close transactions when margins are running out without further notice.

Limited orders are considered good only for the day on which they are received, unless marked "Open", which means they are in force until executed or cancelled.

All Stop Orders are considered Open unless otherwise specified.

THORN & MAGINNIS
Per H."

Mr. McDonough: I offer in testimony a statement dated October 25, 1916 on the letter head of Thorn & Maginnis. I wish you would examine that and you have on there the
291 figures 500 bales, and the delivery, I can't tell what the delivery is under that?

A. It looks like December to me.

"Ex. 122, J. K. P.

Thorn & Maginnis,
Cotton Brokers,

New Orleans, Oct. 25, 1916.

Mr. Fred Browne,
Crowder, Okla.

We beg to confirm the following transactions in Cotton for Future Delivery made this day for your Account and Risk, subject to the Rules and Regulations of the New Orleans Cotton Exchange and United States Cotton Futures Act, Section Five.

| Bought | | | | Sold | | | |
|---|---|---|---|---|---|---|---|
| Bales: | Delivery: | Price: | Remarks: | Bales: | Delivery: | Price: | Remarks |
| | | | | 500 | Dec. | 19.00 | |

On all marginal business we reserve the right to close transactions when margins are running out without further notice. Limited orders are considered good only for the day on which they are received, unless marked "Open", which means they are in force until executed or cancelled.

All Stop Orders are considered Open unless otherwise specified.

THORN & MAGINNIS
Per H".

"Ex. 123, J. K. P.

Thorn & Maginnis,
Cotton Brokers,

New Orleans, Oct. 24, 1916.

Mr. Fred Browne,
Crowder, Okla.

We beg to confirm the following transactions in Cotton for Future Delivery made this day for your Account and Risk, Subject to the rules and Regulations of the New Orleans Cotton Exchange and United States Cotton Futures Act, Section Five.

| Bought | | | | Sold | | | |
|---|---|---|---|---|---|---|---|
| Bales: | Delivery: | Price: | Remarks: | Bales: | Delivery: | Price: | Remarks |
| | | | | 500 | Jan. | 18.75 | |

On all marginal business we reserve the right to close transactions when margins are running out without further notice.

Limited orders are considered good only for the day on which they are received, unless marked "Open", which means they are in force until executed or cancelled.

All Stop Orders are considered Open unless otherwise specified.

THORN & MAGINNIS,
Per H."

---

292 "Ex. 124, J. K. P.

Thorn & Maginnis,
Cotton Brokers,

New Orleans, Oct. 11, 1916.

Mr. Fred Browne,
Crowder, Okla.

We beg to confirm the following transactions in Cotton for Future Delivery made this day for your Account and Risk, Subject to the Rules and Regulations of the New Orleans Cotton Exchange and United States Cotton Futures Act, Section Five.

| Bought | | | | Sold | | | |
|---|---|---|---|---|---|---|---|
| Bales: | Delivery: | Price: | Remarks: | Bales: | Delivery: | Price: | Remarks |
| | | | | 400 | Jan. | 16.90 | |

On all marginal business we reserve the right to close transactions when margins are running out without further notice.

Limited orders are considered good only for the day on which they are received, unless marked "Open", which means they are in force until executed or cancelled.

All Stop Orders are considered Open unless otherwise specified.

THORN & MAGINNIS,
Per H".

Q. Mr. Thorn, I show you a statement from Thorn & Maginnis for account of Fred Browne, dated October 25, 1916, and ask you if that is one of the statements that you sent to Fred Browne?

A. It is on our letter head and seems to be a statement sent to him.

Q. Don't you recognize the handwriting as that of some of your Clerks? A. No, sir; I don't.

Mr. McDonough: It is offered in testimony.

"Ex. 125, J. K. P.

Statement Of Purchase And Sale 500 Bales Cotton Dec. Del'y At N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne Subject to by-laws and rules of exchange where executed.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Oct. 20 | 5 | 17.76 : | Oct 25 | 5 | 19.00 |

| | |
|---|---|
| 620 Pts. profit | 3100. |
| Brokerage | 75. |
| Telegrams | |
| Net Cr | $ 3025. |

THORN & MAGINNIS,
Per L".

New Orleans, La.,
Oct. 25, 1916.

Q. 17.76,—what does that mean?
A. 17¢ and 76 hundredths.
Q. This is the usual kind of statement you sent to him when you closed one of his transactions, wasn't it?
A. That is the usual statement.

293 "Ex. 126, J. K. P.

Statement Of Purchase And Sale 500 Bales Cotton Jan Del'y At N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne Subject to by-laws and Rules of Exchange where Executed.

| | Bought | | | Sold | |
|---|---|---|---|---|---|
| Oct. 20 | 1 | 17.86 | Oct. 24 | 5 | 18.75 |
| | 4 | 17.87 | | | |

| | |
|---|---|
| 441 Pts. profit | 2205. |
| Brokerage | 75. |
| Telegrams | &&&& |
| Net Cr | $2130. |

No. 23335

THORN & MAGINNIS,
Per L."

New Orleans, La.,
Oct. 24, 1916.

Q. I offer in testimony a paper dated October 31st, 1916, and ask you Mr. Thorn, to state what that is?

A. That is a statement of purchase.

Q. Is that a form of slip that has been referred to in these letters? A. It doesn't seem to me.

Q. Isn't that in each of these letters? Every time you made a deal you stated you enclosed a confirmation slip, isn't that what you wrote him?

A. That is not the exact form of confirmation slip. It might have been so in this instance.

Q. Have you a form of the confirmation slip with you?

A. No, I haven't. You will find them in the record, though.

"Ex. 127, J. K. P.

Thorn & Maginnis
Cotton Brokers,

New Orleans, Oct. 31, 1916.

Mr. Fred Browne, Crowder, Okla.

We beg to confirm the following transactions in Cotton for Future Delivery made this day for your account and Risk Subject to the Rules and Regulations of the New Orleans Cotton Exchange and United States Cotton Futures Act, Section Five.

| Bought | | | | Sold | | | |
|---|---|---|---|---|---|---|---|
| Bales: | Delivery: | Price: | Remarks: | Bales: | Delivery: | Price: | Remarks |
| 400 | July | 18.70 | | | | | |

On all marginal business we reserve the right to close transactions when margins are running out without further notice.

Limited orders are considered good only for the day on which they are received, unless marked 'Open', which means they are in force until executed or cancelled. All Stop Orders are considered open unless otherwise specified.

THORN & MAGINNIS
Per H".

294 Mr. McDonough: I offer in testimony a statement of Purchase and Sale of 500 bales dated October 19, 1916.

"Ex. 128, J. K. P.

Statement Of Purchase And Sale 500 Bales Cotton Jan. Del'y at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne Subject to by-laws and rules of exchange where executed

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Oct. 13 | 2 | 1705 | Oct. 18 | 5 | 1787 |
| | 3 | 1707 | | | |
| | | | 404 Pts. profit | | 2020. |
| | | | Brokerage | | 75. |
| | | | Telegrams | | |
| | | | Net Cr | | $1945. |

No. 23251
E. & O. E.
New Orleans, La., Oct. 19, 1916.

THORN & MAGINNIS
Per L".

"Ex. 129, J. K. P.

Statement Of Purchase And Sale 400 Bales Cotton Jan. Del'y. at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne Subject to by-laws and rules of exchange where executed

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Oct. 5 | 4 | 1670 | Oct. 11 | 4 | 1690. |
| | | | 80 Pts. Profit | | 400. |
| | | | Brokerage | | 60. |
| | | | Telegrams | | |
| | | | Net Cr. | | $340. |

No. 23137
E. & O. E.
New Orleans, La., Oct. 11, 1916.

THORN & MAGINNIS,
Per L."

"Ex. 130, J. K. P.

Statement Of Purchase And Sale 400 Bales Cotton July Del'y at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne Subject to by-laws and rules of exchange where executed.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Oct. 31 | 4 | 1870 | Oct. 30 | 4 | 1854 |
| | | | 64 Pts. Loss | | 320. |
| | | | Brokerage | | 60. |
| | | | War Revenue Stamps | | |
| | | | Net Dr. | | $380. |

No. 23919
E. & O. E.
New Orleans, La.,
Oct. 31, 1916.

THORN & MAGINNIS,
Per L".

Q. I wish to ask you about that number in red in the left hand corner. Mr. Thorn explain what that number means?

A. In our book there is a copy of this on a stub and they run in consecutive order.

Q. That enables you to locate it immediately on your books? A. Yes, sir.

Q. Does it refer to the number of sales?

295 A. Each slip is numbered consecutively.

Q. What is on that slip?

A. There is nothing on it until you fill it out.

"Ex. 131, J. K. P.

Statement of Purchase and Sale 600 Bales Cotton Jan. Del'y at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to by-laws and rules of Exchange where executed.

| Bought | | | | Sold | | |
|---|---|---|---|---|---|---|
| Oct. 30 | 2 | 18.28 | | Nov. 10 | 6 | 19.00 |
| Nov. 4 | 2 | 18.40 | | | | |
| | 8 | 19.07 | | | | |
| | | | 250 Pts. Profit | | | 1250. |
| | | | Brokerage | | | 90. |
| No. 24032 | | | Telegrams | | | |
| New Orleans, La., 11/10/1916 | | | Net Cr | | | $1160. |

THORN & MAGINNIS
Per L".

"Ex. 132, J. K. P.

Statement of Purchase and Sale 200 Bales Cotton May Del'y. at N. Y.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to by-laws and rules of Exchange where executed.

| Bought | | | | Sold | | |
|---|---|---|---|---|---|---|
| Oct. 5 | 2 | 17.44 | | No. 10 | 2 | 19.65 |
| | | | 442 Pts. profit | | | 2210. |
| No. 24046 | | | Brokerage | | | 40. |
| | | | Telegrams | | | |
| New Orleans, La., Nov. 10, 1916. | | | Net Cr. | | | $2170. |

THORN & MAGINNIS
Per. L."

"Ex. 133, J. K. P.

Statement of Purchase and Sale 200 Bales Cotton May Del'y. at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to By-laws and rules of exchange where executed.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Nov. 10 | 2 | 19.38 | Sept. 22 | 2 | 16.40 |
| | | 596 Pts. Loss | | | 2980. |
| | No. 24045 | Brokerage | | | 30. |
| | New Orleans, La., | Telegrams | | | |
| | Nov. 10, 1916. | Net Dr. | | | $3010. |

THORN & MAGINNIS
Per L".

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"Ex. 134, J. K. P.

Statement of Purchase and Sale 400 Bales Cotton Jan. Del'y. at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to By-laws and rules of exchange where executed.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Nov. 10 | 1 | 19.18 | Nov. 10 | 4 | 1900 |
| | 3 | 19.19 | | | |
| 296 | | 75 Pts. loss | | | 375. |
| | No. 24043 | Brokerage | | | 60. |
| | New Orleans, La., | Telegrams | | | |
| | Nov. 10, 1916. | Net Dr. | | | $435. |

THORN & MAGINNIS,
Per, L".

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"Ex. 135, J. K. P.

Statement of Purchase & Sale 1000 Bales Cotton May Delivery at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to the By-laws, Rules and Conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Jan. 24 | 5 | 16.73 | Jan. 29 | 10 | 16.85 |
| | 5 | 16.74 | | | |
| | | 115 Pts. Profit | | | 575. |
| | | Brokerage | | | 150. |
| No. 25252 | | Telegrams | | | |
| New Orleans, La. 1/29/1917. | | Net, Cr. | | | $425. |

THORN & MAGINNIS,
Per L".

"Ex. 136, J. K. P.

Statement of Purchase & Sale 1500 Bales Cotton March Delivery at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to the By-laws, Rules and Conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Dec. 5 | 11 | 19.67 | Dec. 2 | 4 | 19.99 |
| | 4 | 19.62 | 4 | 2 | 19.86 |
| | | | 5 | 9 | 19.57 |
| | | 96 Pts. Profit | | | 480. |
| | | Brokerage | | | 225. |
| No. 24430 | | Telegrams | | | |
| New Orleans, La., Dec. 5, 1916. | | Net, Cr. | | | $255. |

THORN & MAGINNIS
Per L".

"Ex. 137, J. K. P.

Statement of Purchase & Sale 500 Bales Cotton May Delivery at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to the By-laws, Rules and Conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Jan. 12 | 5 | 18.08 | Jan. 15 | 5 | 17.02 |
| | | | 530 Pts. loss | | 2650. |
| No. 25056 | | | Brokerage | | 75. |
| New Orleans, La., 1/15/1917 | | | Telegrams | | |
| | | | Net, | Dr. | $2725. |

THORN & MAGINNIS,
Per L".

297 "Ex. 138, J. K. P.

Statement of Purchase & Sale 1000 Bales Cotton May Delivery at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to the By-laws, Rules and Conditions of the Exchange where executed and subject to the United States Cotton Futures Act. Section Five.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Jan. 22 | 5 | 16.44 | Jan. 22 | 5 | 16.29 |
| " | 5 | 16.35 | | 5 | 16.20 |
| | | | 150 Pts. loss | | 750. |
| | | | Brokerage | | 150. |
| No. 25152 | | | Telegrams | | |
| New Orleans, La. 1/22/1917. | | | Net, | Dr | $900. |

THORN & MAGINNIS,
Per L".

"Ex. 139, J. K. P.

Statement of Purchase & Sale 500 Bales Cotton Oct. Delivery at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to the By-laws, Rules and Conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | | Sold | | | |
|---|---|---|---|---|---|---|---|
| Jan. | 22 | 5 | 15.50 | Jan. | 12 | 5 | 16.82 |
| | | | | 660 Pts. profit | | | 3300. |
| | | | | Brokerage | | | 75. |
| No. 25151 | | | | Telegrams | | | |
| New Orleans, La., 1/22/17. | | | | Net, Cr. | | | $3225. |

THORN & MAGINNIS,
Per L"

"Ex. 140, J. K. P.

Statement of Purchase & Sale 200 Bales Cotton Jan. Delivery at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to the By-laws, Rules and Conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | | Sold | | | |
|---|---|---|---|---|---|---|---|
| Dec. | 6 | 2 | 19.61 | Dec. | 6 | 2 | 19.51 |
| | | | | 20 Pts. Loss | | | 100. |
| | | | | Brokerage | | | 30. |
| No. 24456 | | | | Telegrams | | | |
| New Orleans, La., Dec. 6, 1916 | | | | Net, Dr. | | | $130. |

THORN & MAGINNIS
Per L".

298 Q. I will ask you if you can tell from that, referring to Exhibit 137, whether the sale occurred before the purchase, or whether the purchase occurred before the sale?

A. Those particular transactions—

Q. You understood the question. The only thing I asked you was whether you could tell from that whether the purchase occurred before the sale, or whether the sale occurred before the purchase? A. No, I could not.

Q. Have you any means of telling that?

A. I could by referring to the books.

Q. And the books are in New Orleans?

A. Some of this might have been bought at different times.

Q. That wasn't what I asked you.

The Court: I think it is perfectly evident that the books are not here.

Mr. McDonough: I will waive that.

"Ex. 141, J. K. P.

Statement of Purchase & Sale 400 Bales Cotton Jan. Delivery at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to the By-laws, Rules and Conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | | Sold | | |
|---|---|---|---|---|---|---|
| Nov. 27 | 4 | 20.25 | Nov. 28 | 4 | 19.90 | |
| | | | 140 Pts. loss | | | 700. |
| | | | Brokerage | | | 60. |
| No. 24349 | | | | | | |
| | | | Telegrams | | | |
| New Orleans, La., 11/28/1916. | | | Net, Dr. | | | $760. |

THORN & MAGINNIS
Per L".

"Ex. 142, J. K. P.

Statement of Purchase & Sale 800 Bales Cotton Jan.

Delivery at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to the By-laws, Rules and Conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Dec. 1 | 4 | 20.02 | Dec. 1 | 4 | 19.92 |
| | 4 | 19.90 | | 4 | 19.80 |
| 299 | | | 80 Pts. loss | | 400. |
| | | | Brokerage, | | 120. |
| | | | Telegrams | | |
| No. 24388 | | | | | |
| New Orleans, La. Dec. 1, 1916. | | | Net, Dr. | | $520, |

THORN & MAGINNIS
Per L."

"Ex. 143, J. K. P.

Statement of Purchase & Sale 400 Bales Cotton Jan. Delivery at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to the By-Laws, Rules and conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Dec. 1 | 4 | 19.69 | Dec. 4 | | 19.59 |
| | | | 40 Pts. loss | | 200. |
| | | | Brokerage | | 60. |
| No. 24396 | | | Telegrams | | |
| New Orleans, La. Dec. 2, 1916. | | | Net Dr. | | $260. |

THORN & MAGINNIS,
Per L."

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"Ex. 144, J. K. P.

Statement of Purchase & Sale 2000 Bales Cotton May Delivery at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to the By-Laws, Rules and conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Jan. 25 | 2 | 16.83 | Feb. 1 | 20 | 14.00 |
| " | 4 | 16.84 | | | |
| 27 | 2 | 17.06 | | | |
| 29 | 4 | 17.08 | | | |
| " | 3 | 16.88 | | | |
| 30 | 2 | 16.93 | | | |
| 31 | 3 | 17.13 | | | |
| | | | 5935 Pts. | loss | 29675. |
| No. 25277 | | | Brokerage | | 300. |
| New Orleans, La. 2/1/1917. | | | Telegrams | | |
| | | | Net, Dr. | | $29975. |

THORN & MAGINNIS
Per L."

"Ex. 145, J. K. P.

Statement of Purchase & Sale 100 Bales Cotton May Delivery at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to the By-Laws, Rules and conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Jan. 11 | 1 | 18.04 | Jan. 11 | 1 | 17.89 |
| | | | 15 Pts. Loss | | 75. |
| | | | Brokerage | | 15. |
| | | | Telegrams | | |
| No. 25018 | | | | | |
| New Orleans, La. 1/11/17 | | | Net, Dr. | | $90. |

THORN & MAGINNIS,
Per L."

300

"Ex. 146, J. K. P.

Statement Of Purchase & Sale 300 Bales Cotton May Delivery at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to the By-Laws, Rules and conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Jan. 11 | 2 | 18.04 | Jan. 11 | 3 | 17.90 |
| | 1 | 18.05 | | | |
| | | | 43 Pts. loss | | 215. |
| No. 25021 | | | Brokerage | | 45. |
| New Orleans, La. 1/11/1917. | | | Telegrams | | |
| | | | Net, Dr | | $ 260. |

THORN & MAGINNIS
Per L".

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"Ex. 147, J. K. P.

Statement Of Purchase & Sale 100 Bales Cotton May Delivery at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to the By-Laws, Rules and conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Jan. 10 | 1 | 18.03 | Jan. 11 | 1 | 17.88 |
| | | | 15 Pts. loss | | 75. |
| | | | Brokerage | | 15. |
| No. 25015 | | | Telegrams | | |
| New Orleans, La. 1/11/1917. | | | Net, Dr | | $ 90. |

THORN & MAGINNIS
Per L".

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"Ex. 148, J. K. P.

Statement Of Purchase & Sale 800 Bales Cotton May Delivery at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to the By-Laws, Rules and conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Jan. 12 | 5 | 18.15 | Jan. 13 | 1 | 17.70 |
| | 3 | 18.08 | | 7 | 17.65 |
| | | | 374 Pts. | | 1870. |
| | | | Brokerage | | 120. |
| No. 25043 | | | Telegrams | | |
| New Orleans, La. 1/13/1917. | | | Net, Dr. | | $1990. |

THORN & MAGINNIS
Per L."

301

"Ex. 149, J. K. P.

Statement Of Purchase & Sale 800 Bales Cotton Mch. Delivery at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to the By-Laws, Rules and conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Dec. 16 | 2 | 17.94 | Dec. 21 | 5 | 16.40 |
| 18 | 2 | 17.70 | 1 | 1 | 16.84 |
| 20 | 1 | 16.82 | | 2 | 15.95 |
| | | | 787 Pts. loss | | 3935. |
| No. 24750 | | | Brokerage | | 120. |
| New Orleans, La. 12/21/1916. | | | Telegrams | | |
| | | | Net, Dr. | | $4055. |

THORN & MAGINNIS
Per L."

"Ex. 150, J. K. P.

Statement Of Purchase & Sale 400 Bales Cotton Mch. Delivery at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to the By-Laws, Rules and conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Dec. 8 | 4 | 18.85 | Dec. 8 | 4 | 19.47 |

248 Pts. profit 1240.
Brokerage 60.
Telegrams

No. 24500
New Orleans, La. Dec. 8, 1916. Net, Cr. $1180.

THORN & MAGINNIS
Per L."

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"Ex. 151, J. K. P.

Statement Of Purchase & Sale 200 Bales Cotton Jan. Delivery at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to the By-Laws, Rules and conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Dec. 7 | 1 | 19.54 | Dec. 8 | 2 | 19.10 |
| 1 | 1 | 19.53 | | | |

87 Pts. loss 435.
Brokerage 30.
Telegrams

No. 24499
New Orleans, La. Dec. 8, 1916. Net, Dr. $465.

THORN & MAGINNIS
Per L."

302

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"Ex. 152, J. K. P.

Statement Of Purchase & Sale 800 Bales Cotton Mch. Delivery at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to the By-Laws, Rules and conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Dec. 9 | 2 | 18.49 | Dec. 11 | 2 | 18.41 |
| | 2 | 18.59 | | 6 | 18.39 |
| | 4 | 18.54 | | | |

116 Pts. loss 580.
Brokerage 120.
Telegrams

No. 24552
New Orleans, La. Dec. 11, 1916.

Net, Dr. $ 700.

THORN & MAGINNIS
Per L."

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"Ex. 153, J. K. P.

Statement Of Purchase & Sale 600 Bales Cotton Mch. Delivery at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to the By-Laws, Rules and conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Dec. 29 | 2 | 17.29 | Dec. 29 | 2 | 17.05 |
| | 2 | 17.32 | | 2 | 17.22 |
| | 2 | 16.94 | | 2 | 16.84 |

88 Pts. loss 440.
Brokerage 90.
Telegrams

No. 24871
New Orleans, La. Dec. 29, 1916.

Net, Dr. $ 530.

THORN & MAGINNIS
Per L."

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"Ex. 154, J. K. P.

Statement Of Purchase & Sale 200 Bales Cotton May Delivery at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to the By-Laws, Rules and conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Dec. 30 | 2 | 17.19 | Jan. 3 | 2 | 17.24 |

| | |
|---|---|
| 10 Pts. profit | 50. |
| Brokerage | 30. |
| Telegrams | |

No. 24914
New Orleans, La. Jan. 3, 1917. Net, Cr $ 20.

THORN & MAGINNIS
Per L."

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303 "Ex. 155, J. K. P.

Statement of Purchase & Sale 1000 Bales Cotton May Delivery at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to the By-Laws, Rules and Conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Jan. 3 | 2 | 17.44 | Jan. 9 | 10 | 18.20 |
| " | 2 | 17.29 | | | |
| 4 | 2 | 17.34 | | | |
| 5 | 4 | 17.73 | | | |

| | |
|---|---|
| 694 Pts. profit | 3470. |
| Brokerage | 150; |
| Telegrams | |

No. 24974
New Orleans, La. Jan. 9, 1917 Net, Cr. $3320.

THORN & MAGINNIS,
Per L".

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"Ex. 156, J. K. P.

Statement of Purchase & Sale 500 Bales Cotton July Delivery at N. O.

By Thorn & Maginnis, for Acc't. of Mr. Fred Browne

Subject to the By-Laws, Rules and Conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Jan. 9 | 1 | 18.74 | Jan. 10 | 2 | 18.80 |
| | 4 | 18.77 | | 3 | 18.79 |

15 Pts. profit 75.
Brokerage 100.
Telegrams

No. 24987

New Orleans, La. Jan. 10, 1917. Net, Dr. $ 25.

THORN & MAGINNIS,
Per L".

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"Ex. 157, J. K. P.

Statement of Purchase & Sale 500 Bales Cotton May Delivery at N. Y.

By Thorn & Maginnis, for Acc't. of Mr. Fred Browne

Subject to the By-Laws, Rules and Conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold. | | |
|---|---|---|---|---|---|
| Jan. 8 | 5 | 18.72 | Jan. 10 | 5 | 18.80 |

40 Pts. profit 200.
Brokerage 100.
Telegrams

No. 24986
New Orleans, La. Jan. 10, 1917.

Net, Cr. $ 100.

THORN & MAGINNIS
Per L."

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304 "Ex. 158, J. K. P.

Statement of Purchase & Sale 1500 Bales Cotton May Delivery at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to the By-Laws, Rules and Conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Jan. 6 | 5 | 18.00 | Jan. 10 | 5 | 18.35 |
| 9 | 5 | 18.29 | | 10 | 18.45 |
| | 5 | 18.62 | | | |
| | | | 170 Pts. profit | | 850. |
| No. 24985 | | | Brokerage | | 225. |
| New Orleans, La. Jan. 10, 1917. | | | Telegrams | | |
| | | | Net, Cr. | | $ 625. |

THORN & MAGINNIS,
Per L".

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"Ex. 159, J. K. P.

Statement of Purchase & Sale 200 Bales Cotton Mch. Delivery at N. O.

By Thorn & Maginnis, for Acc't. of Mr. Fred Browne

Subject to the By-Laws, Rules and Conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Nov. 10 | 2 | 19.26 | Nov. 17 | 2 | 2000. |
| | | | 148 Pts. profit | | 740. |
| | | | Brokerage | | 30. |
| No. 24147 | | | Telegrams | | |
| New Orleans, La. Nov. 17, 1916. | | | Net, Cr. | | $710 |

THORN & MAGINNIS,
Per L".

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"Ex. 160, J. K. P.

Statement of Purchase & Sale 400 Bales Cotton Jan. Delivery at N. O.

By Thorn & Maginnis, for Acc't. of Mr. Fred Browne

Subject to the By-Laws, Rules and Conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Nov. 11 | 2 | 19.06 | Nov. 17 | 4 | 1970. |
| 15 | 2 | 19.47 | | | |

174 Pts. profit 870.
Brokerage 60.
Telegrams

Net, Cr. $810.

No. 24148
New Orleans, La. Nov. 17, 1916.

THORN & MAGINNIS
Per L."

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305 "Ex. 161, J. K. P.

Statement of Purchase & Sale 400 Bales Cotton Jan. Delivery at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to the By-Laws, Rules and Conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Nov. 18 | 4 | 19.87 | Nov. 21 | 4 | 20.31 |

176 Pts. profit 880.
Brokerage 60.
Telegrams

Net, Cr. $820.

No. 24207
New Orleans, La. 11/21/1916.

THORN & MAGINNIS,
Per L".

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"Ex. 162, J. K. P.

Statement of Purchase & Sale 300 Bales Cotton Mch. Delivery at N. O.

By Thorn & Maginnis, for Acc't. of Mr. Fred Browne

Subject to the By-Laws, Rules and Conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Nov. 25 | 3 | 21.00 | Nov. 24 | 3 | 20.36 |
| | | | 192 Pts. loss | | 960. |
| | | | Brokerage | | 60. |
| No. 24291 | | | Telegrams | | |
| New Orleans, La. 11/25/1916. | | | Net, Dr. | | $1020. |

THORN & MAGINNIS,
Per L".

"Ex. 163, J. K. P.

Statement of Purchase & Sale 200 Bales Cotton Mch. Delivery at N. O.

By Thorn & Maginnis, for Acc't. of Mr. Fred Browne

Subject to the By-Laws. Rules and Conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold. | | |
|---|---|---|---|---|---|
| Nov. 24 | 2 | 20.50 | Nov. 21 | 1 | 20.92 |
| | | | | 1 | 20.94 |
| | | | 86 Pts. profit | | 430. |
| No. 24269 | | | Brokerage | | 40. |
| New Orleans, La. Nov. 24, 1916. | | | Telegrams | | |
| | | | Net, Cr. | | $ 390. |

THORN & MAGINNIS
Per L."

306 "Ex. 164, J. K. P.

Statement of Purchase & Sale 400 Bales Cotton Jan. Delivery at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to the By-Laws, Rules and Conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Nov. 27 | 2 | 20.56 | Nov. 27 | 2 | 20.46 |
| | 2 | 20.55 | | 2 | 20.45 |
| | | | 40 Pts. loss | | 200. |
| | | | Brokerage | | 60. |
| | | | Telegrams | | |
| | | | Net, Dr. | | $260. |

No. 24315
New Orleans, La. 11/27/1916.

THORN & MAGINNIS
Per L".

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"Ex. 165, J. K. P.

Statement of Purchase & Sale 200 Bales Cotton Jan. Delivery at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to the By-Laws, Rules and Conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Dec. 5 | 2 | 19.36 | Dec. 7 | 2 | 19.50 |
| | | | 28 Pts. profit | | 140. |
| | | | Brokerage | | 30. |
| No. 24476 | | | Telegrams | | |
| New Orleans, La., Dec. 7, 1916. | | | Net, Cr. | | $110. |

THORN & MAGINNIS,
Per L".

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"Ex. 166, J. K. P.

Statement of Purchase & Sale 400 Bales Cotton Mch. Delivery at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to the By-Laws, Rules and Conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Dec. 13 | 2 | 17.79 | Dec. 19 | 4 | 16.88 |
| | 2 | 17.82 | | | |
| | | | 370 Pts. loss | | 1850. |
| | | | Brokerage | | 60. |
| No. 24707 | | | Telegrams | | |
| New Orleans, La. Dec. 19, 1916. | | | Net, Dr. | | $1910. |

THORN & MAGINNIS,
Per L".

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"Ex. 167, J. K. P.

Statement of Purchase & Sale 400 Bales Cotton May Delivery at N. O.

By Thorn & Maginnis, for Acc't. of Mr. Fred Browne

Subject to the By-Laws, Rules and Conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Dec. 13 | 4 | 18.20 | Dec. 13 | 4 | 18.05 |
| | | | 60 Pts. loss | | 300. |
| No. 24608 | | | Brokerage | | 60. |
| New Orleans, La. 12/13/1916. | | | Net, Dr | | $360. |

THORN & MAGINNIS,
Per L".

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307 "Ex. 168, J. K. P.

Statement of Purchase & Sale 700 Bales Cotton Mch. Delivery at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to the By-Laws, Rules and Conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Dec. 11 | 5 | 18.27 | Dec. 13 | 7 | 18.00 |
| 13 | 2 | 18.21 | | | |

177 Pts. loss 885.
Brokerage 105.
Telegrams

No. 24609 Net, Dr. $990.
New Orleans, La. 12/13/1916.

THORN & MAGINNIS
Per L".

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"Ex. 169, J. K. P.

Statement of Purchase & Sale 400 Bales Cotton Jan. Delivery at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to the By-Laws, Rules and Conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Dec. 13 | 4 | 17.69 | Dec. 13 | 4 | 17.54 |

60 Pts. loss 300.
Brokerage 60;
Telegrams

No. 24607

New Orleans, La., 12/13/1916. Net, Dr. $360.

THORN & MAGINNIS,
Per L".

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"Ex. 170, J. K. P.

Statement of Purchase & Sale 200 Bales Cotton Mch Delivery at N. O.

By Thorn & Maginnis, for Acc't of Mr. Fred Browne

Subject to the By-Laws, Rules and Conditions of the Exchange where executed and subject to the United States Cotton Futures Act, Section Five.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Dec. 22 | 2 | 16.00 | Dec. 22 | 2 | 16.05 |
| | | | 10 Pts. profit | | 50. |
| | | | Brokerage | | 30. |
| No. 24780 | | | Telegrams | | |
| New Orleans, La. Dec. 22, 1916. | | | Net, Cr. | | $20. |

THORN & MAGINNIS,
Per L".

308 Q. Mr. Thorn, referring to the statements which have been introduced in testimony, I want to understand a little better what you mean by these numbers, 24780?

A. I tried to explain on our books they are numbered consecutively, and they are perforated, and there is a carbon copy of every one of these.

Q. Is that the number of statements sent out?

A. Oh, no, not that number sent out. It is so you can go back and identify it. I could go back and identify that slip.

Q. Are you numbering the trades? A Not at all.

Q. Are you numbering the statements consecutively from the beginning? A. Might have started at 20,000.

Q. Mr. Thorn, what I want to understand is, give us some intelligent reply, if you have any, meaning no reflection on what you have said, as to what that number means?

A. I can't answer any more intelligently than I have. I told you on our books all statements are numbered consecutively, and when these are written out a carbon copy is made and the one underneath on the slip has a number.

Q. When you started in business in the fall did you start with a number?

A. No particular number. Our business has been in operation many years, you know.

Q. You run all the time then? You don't begin in the fall?

A. All the time.

Q. Your business runs all the time? A. Absolutely.

Q. This number on there means nothing?

A. Nothing.

309 Q. It gives no indication of the number of deals you have made? A. No.

Q. It is merely an identification to connect that with your books? A. Correct.

Mr. McDonough: Now I want to introduce in evidence all other of the telegrams, and I am willing to save time by hav-

ing the stenographer number them consecutively, and then let them be introduced all at once. We have endeavored to arrange them as near as we could in the order of their dates. A good many of these telegrams, Your Honor, are already in testimony but do not give the hour and date sent and received.

Mr. Cravens: Are they all telegrams that passed between Thorn & Maginnis and Mr. Brown?

Mr. McDonough: Yes, sir.

Mr. Cravens: We object to the introduction of any that do not refer to these specific transactions.

Mr. McDonough: I offer now in testimony the telegrams covering these transactions from Thorn & Maginnis to Fred Browne, the defendant, being exhibits Numbered from 171 to 407, inclusive, these all being telegrams covering the transactions beginning in October and all signed by Thorn & Maginnis.

Mr. Oglesby: Plaintiffs object to exhibit 391 which has been offered on the ground that it is not an original. It purports to be a telegram dated New Orleans, 10.53 Jan. 24, 1917, to Fred Browne, signed T. & M. The original, of course, would be in Mr. Browne's possession here.

Mr. McDonough: I will offer them but not ask the court to rule on it until I put Mr. Browne on the stand. I will not offer them until I put Mr. Browne on.

Mr. Cravens: I do not see how we can make our objections specific enough to get it in the record unless we do
310 it as they are offered.

Mr. McDonough: I will obviate that for the present and not offer them now until I put Mr. Browne on.

Q. Mr. Thorn, were all the members of your firm members of the New Orleans Cotton Exchange at the time of these transactions? A. Yes, sir.

Q. How many members of your firm were there at that time? A. Three.

Q. Who were the three?

A. Mr. Samuel C. Coleman, Miles J. Kehoe and myself. And Mr. W. T. Maginnis; he was not very active at the time, he was sick. Make that four instead of 3.

Q. How many members were there at that time in the New Orleans Cotton Exchange?

A. I could only approximate it.

Q. Approximate it? A. About 470 or 480.

Q. What was a seat worth on the New Orleans Cotton Exchange?

Mr. Cravens: Objected to as incompetent, irrelevant and immaterial.

The Court: What is the object of that question?

Mr. McDonough: To show what the value of a membership in the New Orleans Cotton Exchange was at the time, on the ground that it throws light on these transactions.

The Court: How does it throw light on them?

Mr. McDonough: It shows, it strikes me that it gives information as to the nature of that business and what they are doing.

Mr. Cravens: We have no objection to him asking the nature of the business.

The Court: Objection is sustained.

Mr. McDonough: I offer to show that it ranged between five and eight thousand dollars. I do not know, myself what it was, but that is my information that it ranged in that way.

311 The Court: Objection sustained and exception noted.

Redirect Examination

By Mr. Cravens:

Q. Mr. Thorn, as a member of the firm of Thorn & Maginnis I want you to state what finanical interest the firm of Thorn & Maginnis had, or could have possibly had in the dealings as testified to between your firm and Fred Browne in the 2,000 bales of cotton in controversy?

A. Our interests were the commissions.

Q. Did you have any interest in the rise and fall in the market? A. None whatever.

Q. What was your commisison on the cotton bought and sold? A. $15.00 per hundred bales.

Q. Well, that is $300.00? A. Yes, sir.

Mr. McDonough: You went over that before.

The Court: All that was gone over.

A. $7.50 on the hundred bales. Of course, the purchase of a hundred and sale would be $15.00.

Q. You had no pecuniary or financial interest in these trades with Mr. Browne other than your commissions for buying and selling for him? A. None whatever.

Q. In the contracts you made in compliance with his orders by wire or letter, or otherwise, did you bind your firm to receive the cotton that he ordered you to buy?

Mr. McDonough: Objected to because it is a question of law whether he bound himself. The statute requires it to be in writing and the witness is giving an opinion of law.

The Court: On what ground do you think that is competent, Mr. Cravens? Isn't it a conclusion of law?

Mr. Cravens: Yes, sir; that is probably correct.

312 The Court: The objection will be sustained.

Q. State whether or not in each instance when you got an order from Mr. Brown to buy on his account, did you make with reference to that particular order what you considered a binding contract on your firm to receive that cotton?

Mr. McDonough: Objected to for the same reason as the other.

Mr. Cravens: We think the question is competent.

Mr. McDonough: The contracts themselves speak for themselves.

Mr. Cravens: Of course, the contracts speak for themselves as to whether they are binding, but they are attacking the good faith when they state these were gambling transactions.

Mr. McDonough: I withdraw the objection.

A. We obligated ourselves to receive or deliver the cotton.

Q. I didn't ask you that. I am simply asking you whether you made a binding contract on yourselves to receive that cotton? A. We did.

Q. In this suit there is only one sale involved, that is, of 2,000 bales. When you sold the 2,000 bales on the order of Mr. Browne, did you make with a member of the Cotton Exchange a contract for the delivery of that cotton to him that you considered binding on your firm?

Mr. McDonough: I move to exclude his answer, the ground of the objection being that that was gone over. He has introduced that testimony and now he is giving his opinion as to whether that is a binding contract on himself. The rules of that association might be such that if he didn't carry it out

he could be expelled from the association. He has introduced that contract; he has testified about it; it is before the
313 court and jury; hence in my judgment he will not be permitted to say that he made a binding contract.

Mr. Cravens: I didn't ask him that. Of course, whether he did make a binding contract is a question the court will have to determine. I am asking whether or not in his opinion he made a contract binding on his firm.

The Court: You have already asked him on examination in chief what his intention was, and he answered it. Now you are endeavoring to get what his intention was when you—

Mr. Cravens: I don't recollect that.

The Court: My recollection is that you went into the question of his intention.

Mr. Cravens: If I did, it won't be necessary to reask it, of course.

The Court: My recollection is that his answer was that he intended to make a contract for actual receipt and delivery.

Mr. Cravens: This question is probably somewhat different in its meaning. It is whether or not he thought at the time he was acting for Mr. Browne as Mr. Browne's agent, whether in his opinion he was making a contract binding his firm.

The Court: Well, the opinion is one thing and the contract is another thing.

Mr. Cravens: Now that is on the sale of the cotton, when he recived an order from Mr. Browne to sell 2,000 bales of cotton for him at a certain price, or at the best price under that, whether or not he believed at the time he made that sale to Stouse & Airey, that he legally bound his firm to deliver it, for the purpose of showing, not whether or not it was
314 a legal contract, but whether or not he thought it was.

The Court: You may ask him whether he thought that he bound his firm to deliver it.

Q. I will put it in that form. Did you believe at the time you sold to Airey & Stouse, when you sold the 2,000 bales that the defendant had purchased, to Airey & Stouse, did you believe that you were making a contract for the delivery of that cotton that was binding on your firm? A. Yes, sir.

Q. Mr. Thorn, was there any circumstance that you can recall in your transactions with the defendant, by letter or telegram, and I believe you say those are the only means of communicating with him, that indicated to you that Fred Browne was gambling on futures?

Mr. McDonough: Objected to, Your Honor. He is asking him to pass as a juror on the issue of fact involved.

Mr. Cravens: No, may it please the Court, it is the way it presented itself to the firm of Thorn & Maginnis at the time, if in good faith they accepted these orders not believing that they were gambling transactions, it would make no difference whether they were gambling transactions or not. Fred Browne may have been gambling to his heart's content; he may not have had any idea of receiving or delivering the cotton, but if there is nothing in the transaction to bring it to the knowledge of Thorn & Maginnis—it takes two, according to the decisions of the courts, to make a gambling contract. In other words, Browne might have gone into the market to buy and sell cotton not expecting to receive or deliver it, but if he induced the party on the other side that bound him to deliver or receive it regardless of the defendant's state of
315 [mine], and he would be bound by it.

The Court: Well, but you are putting the question this way: Whether anything in the correspondence, or in the course of the business transactions that lead you to believe that he was engaging in gambling transactions. Now that is about the way you put it, wasn't it?

Mr. Cravens: Yes, sir; I think so.

The Court: I don't believe that the question is proper in that form.

Q. I withdraw the question and ask it in this way: Did you at the time you were dealing with Fred Browne the defendant, know or believe that he was gambling in futures?

Mr. McDonough: That is objected to your Honor, because it calls for a conclusion. The meaning of it is just this: Does the proof on behalf of the plaintiffs here amount to showing that this was a gambling transaction.

The Court: It means this. I think it just practically comes back to the same point, I think, as to what he intended. Now the witness may testify to that; at the same time, that is not conclusive on the jury. The jury takes it into consideration in connection with all the other testimony in the case and de-

termines whether or not there was a gambling transaction, and if he knew about it. So I think he may answer.

Mr. McDonough: Exception.

A. No.

Q. At the time of the taking of the depositions of Samuel C. Coleman and Miles J. Kehoe, partners in the firm of Thorn & Maginnis at New Orleans, La. in this case, were your books at that time accessible to the attorneys for the defendant?

A. Yes.

316 Q. Was any request in the examination of witnesses in the taking of the depositions at New Orleans for the trial in this case, made for the production of your books?

A. Yes.

Q. Were they produced? A. Yes.

Q. This case was tried once before in this court, was it not? A. Yes.

Q. And you testified as a witness? A. Yes.

Q. I will ask you if any request or suggestion was made by the defendant for the production of your books at that trial? A. No.

Q. Your firm has gone out of business since the institution of this suit? A. Yes.

Q. Who has possession of the books if you know?

A. They are in the office of Mr. Kehoe, I believe, now

Q. They are not in your care? A. Not in my care

Q. Mr. Thorn, I will ask you if in your experience as a member of the New Orleans Cotton Exchange, if you know whether or not all contracts for the sale or delivery of cotton which are carried to maturity, deliveries are actually made?

A. Yes.

Mr. McDonough: That is objected to, Your Honor, in the first place, as I recall—I am not sure about Mr. Thorn having testified on that, but the evidence is in here that these things are shown by the records of the New Orleans Cotton Exchange. That is the testimony of Kehoe and one other partner in this case. Now that being true, he couldn't know except

317 by the records, and the records would be the best evidence of it.

Mr. Cravens: May it please the Court, he could know from his own knowledge and observation of the records

The Court: Is that your only objection to that?

Mr. McDonough: I don't think it is competent at all; I don't see how it proves or tends to prove any issues here.

They objected to our going into the other transactions; if they go into it I think we have a right to go into it and show the issues of it.

Mr. Cravens: May it please the Court, he has been reading into the record a million letters and every other character of corespondence that passed, regardless of whether they referred to the transactions in question or not.

The Court: I think the best way would have been to object to them. On what ground do you regard the answer to the question you put as material to this case?

Mr. Cravens: As I understand the law, there is nothing in closing out contracts or selling contracts from one person to another, that of itself [makes that] makes them gambling transactions. What I want to show is that if Fred Browne had carried these contracts to maturity that Thorn & Maginnis would have made deliveries for him for the cotton sold, or would have received for him the cotton that they bought for him, and that that was their custom; for the purpose of proving their intent in these particular transactions between themselves and Fred Browne.

The Court: In which there was nothing ever carried to maturity?

Mr. Cravens: Not a single one. The court can readily see that because every contract made was for May delivery
318 and the contract was closed out in February, 1917.

Mr. McDonough: Your Honor, I challenge that because the complaint has a statement attached beginning September 22nd showing that this was a final settlement, and under the law of this jurisdiction, that is a part of the complaint. Now if counsel are permitted to go into this,—I don't think it admissible, but if the court deems it different, I think I would have a right to introduce the proof of the transactions I offered the other day. Now if he is permitted to say that so far as he knows, every transaction that was carried to maturity there was a delivery, he is deciding the question for the jury.

Mr. Cravens: I withdraw the question.

Q. State whether or not with reference to the 2,000 bales purchased by Fred Browne for delivery in May 1917, if it was your intention and if you would have made delivery of those 2,000 bales in May 1917 under those contracts if Fred Browne carried them to that date?

Mr. McDonough: That is objected to for 2 reasons. First he has already answered, and second is What would you have done.

Mr. Cravens: That means what his intention was.

The Court: The same thing he has already testified to. He may answer, however, I think you ought to come to a termination of that point of the intention.

Mr. Cravens: I think we have very nearly, Your Honor.

Mr. McDonough: Exception.

A. We would have received the cotton bought and delivered the cotton sold.

Q. You would have? A. Yes.

Cross-Examination

By Mr. McDonough:

319 Q. Mr. Thorn, you said you would have delivered it. Now then I will ask you what you would have done if cotton had opened at ten cents that morning?

A. Which morning?

Q. The morning of February 1st. What would you have done if cotton had opened at ten cents on the morning of Febraury 1st? A. Sold it at ten cents.

Q. What would you have done if it had opened at one cent per pound? A. Still sold it.

Q. Without any notice of any kind?

A. I had no right to—

Q. I didn't ask you that. I am asking you if you would have sold it at one cent a pound without notice to him?

A. I would have sold it at the market price.

Q. I didn't ask you that. Would you have sold it at one cent? A. Yes, I would have sold it.

Q. You say you made a binding contract when that cotton, the 2,000 bales was sold, to receive that cotton, or deliver it?

A. To deliver it.

Q. To whom did you make that contract?

A. Airey & Stouse.

Q. Who were they?

A. Brokers on the New Orleans Cotton Exchange.

Q. Who were the parties back of them? A. I don't know.

Q. Do you have any idea? A. No.

Q. Do you know whether they were responsible people or not? A. No.

Q. Do you know whether they were reported in any agency?

A. No; I know Airey & Stouse to be responsible.

320 Q. Airey & Stouse are brokers just like you are?

A. I am not supposed to know the brokers' clients.

Q. Airey & Stouse were brokers just like you? A. Yes.

Q. And you were dealing with them? A. Yes.

Q. And as between you and them the rules of the New Orleans Cotton Exchange require you to carry out that contract? A. Yes.

Q. You had no hold on the man back of Airey & Stouse?

A. None on earth.

Q. And who they were you did not know?

A. Had no right to know.

Q. And did not care? A. Did not care.

Redirect Examination

By Mr. Cravens:

Q. Do you know how long Airey & Stouse had been doing business on the New Orleans Cotton Exchange?

A. Several years is all I know.

Q. Do you regard their financial standing such that you could rely on their ability to comply with any such contracts as you made with them? A. I did.

Q. You bought these different purchases of cotton from Ellis & Company, Hayward Howard & Company, Newburger & Company,—state whether or not all the firms with which you did business in connection with the Browne 2,000 bales of cotton were financially responsible, in your opinion, to your firm for a compliance with your contract?

Mr. McDonough: That is objected to?

The Court: Overruled and exception noted.

A. They were financially responsible.

321 Cross-Examination

By Mr. McDonough:

Q. Under the rules of the Cotton Exchange as between you and them, you only looked to them? You have said that?

A. Yes.

Q. You looked to nobody else for the performance of contracts you might make? A. Yes.

Q. And if a broker did not carry out these contracts he would be dismissed? A. He would fail on the exchange.

Q. He would fail on the exchange and that would turn him out? A. Not necessarily.

By Mr. Oglesby:

Q. Are those books still in New Orleans? A. They are.
Q. And you have not got them here? A. No.
Q. And they are still in New Orleans? A. They are.

By Mr. McDonough:

Q. You were present during the last trial that you mentioned a while ago? A. I was.

Q. Don't answer this until the court rules on it. Don't you know that the only evidence offered in that trial was as to whether the contracts complied with the Cotton Futures Act, and didn't the case go off on that question and that alone?

Mr. Cravens: I think that is a question of law. We have no objection to it.

A. I hardly know how to answer that. It is a little over my head.

Mr. Cravens: Q. You were examined in that case like you were here? A. Yes.

By Mr. McDonough:

Q. Do you mean to testify that these were introduced at that trial? A. Not those.

Q. Do you mean to testify that all those exhibits were
322 introduced like they are now?

A. Not exactly the same, but I was asked questions which I answered.

Q. And it only referred to the questions about the contract? A. I couldn't say that.

By Mr. Cravens:

Q. Did you detail that entire transaction with Mr. Browne like you have testified in this case?

A. I answered every question put to me. I didn't get as far.

Q. I asked you if you testified as to the purchase and sale the same as you have here?

A. There is no difference except I did not go as far.
Q. Did you testify as to the transactions?
A. I did, but he didn't ask as many questions.

Witness excused.

Plaintiffs rest.

J. L. BURBA, a witness sworn on behalf of the defendant, testified as follows:

Direct Examination

By Mr. McDonough:

Q. State your name? A. J. L. Burba.
Q. Where do you live? A. McAlester, Okla.
Q. How long have you lived there? A. About three years.
Q. Did you ever do any business with Thorn & Maginnis?
A. Yes, sir.
Q. What kind of business was it?
A. Trading in Cotton Futures.
Q. To what extent did you trade with them?
A. Well, something like fifty or sixty trades, purchases and sales.
Q. Were you buying and selling futures, or were you buying and selling spots?

Mr. Cravens: Objected to.

323 The Court: What is the object of the question?

Mr. McDonough: The object is to show the nature of the business that he did with Thorn & Maginnis, for the purpose of showing that they were not intending to deliver any cotton.

Mr. Cravens: This is a suit upon specific transactions between the plaintiffs and the defendant. Now as to what other transactions were had with someone else or anybody but Browne, would not be material, and would not tend to prove what their intentions were in dealing with Browne?

Mr. McDonough: The purpose is to show by Mr. Burba that he dealt in futures with them; bought and [sole] and that without any intention to deliver, and that he sold contracts and bought contracts and speculated with them in the rise and fall of prices of cotton on the Exchange. Mr. Thorn admits that he dealt with J. L. Burba and introduced a book showing Mr. Burba's name in that book, and that is the object of the testimony, because it marks the nature of business of Thorn & Maginnis and tends to show that they knew that they did not intend delivery.

Mr. Cravens: I think also in addition to the objection made a while ago, that it was covered by the authorities we cited yesterday that the closing out of transactions and the dealing in a large volume of business was not even testimony tending to prove a gambling transaction. Now the most that could

be said of this would be the buying and selling of a large amount of cotton and would not tend, according to the language of the court, to establish a gambling transaction.

The Court: Objection sustained.

Mr. McDonough: I offer to prove by Mr. Burba that he dealt with them in the purchase and sale of cotton and that he had no intention to deliver it or accept it under the contracts.

Mr. Cravens: We object.

The Court: Sustained and exception noted.

324 Q. Mr. Burba, do you know whether or not Thorn & Maginnis had a representative traveling in Oklahoma soliciting business?

Mr. Cravens: Objected to unless he received that information from Thorn & Maginnis, or some member of the firm.

The Court: How do you expect the witness to know whether they had a representative there or not?

Mr. McDonough: He would not know probably, except by the representative himself.

The Court: Objection sustained.

Mr. McDonough: Exception.

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FRED BROWNE, the defendant in the case, being first duly sworn, testified as follows:

Direct Examination

By Mr. McDonough:

Q. State your name? A. Fred Browne.
Q. Where do you live?
A. I live in Fort Smith, Arkansas.
Q. Did you ever live in Crowder, Oklahoma? A. I did.
Q. Did you live there in 1916? A. I did not.
Q. Where did you live in 1916?
A. I lived in Ft. Smith here.
Q. Before 1916, what business were you engaged in?
A. Immediately before?
Q. Yes.
A. I have been engaged in the mercantile business at Crowder City, and farming and stock business, I don't know just how long before 1916.
Q. Where were you reared? Where did you grow up?

A. I was born in Sebastian County five miles from Ft. Smith.

Q. What kind of business have you been in for the last eight or ten years?

A. Been farming and stock raising principally. I am now in the wholesale grocery business here in Ft. Smith.

Q. What was the extent of your farming business and stock raising business? Was that your principal business prior to 1916?

325 A. It was.

Q. Where were your farms located?

A. Near Crowder City, Okla.

Q. Did you have any personal acquaintance with the firm of Thorn & Maginnis before you began dealing with them?

A. I did not.

Q. About when did you first have any dealings with Thorn & Maginnis?

A. I think this transaction in September was the first one probably, September 22nd.

Q. Had you ever dealt in cotton futures before that?

A. I had.

Q. To what extent?

A. One or two transactions; either one or two several years apart. I am not sure whether I had one other transaction, I had one other transaction several years ago and I had another one, but I am not sure whether it was after I commenced with Thorn & Maginnis. I think it was. I think two before.

Q, Were those transactions prior to September 22, 1916 with some brokers other than Thorn & Maginnis?

A. They were.

Q. Can you tell as best you are able to, how many bales you had dealt in prior to September 22, 1916?

A. One, several years before. That is, one hundred bales, one transaction, and I think one other, probably a year, as well as I remember, a year before, or maybe 2 years before I became acquainted with Thorn & Maginnis.

Q. Had anybody solicited you to do business with Thorn & Maginnis? A. They had.

Q. Do you know the name of the person?

A. I do not. I might state how I became acquainted with them if you—

Q. Did Thorn & MMaginnis ever ask you for a financial statement?

326 A. They did not.

Q. What was your first financial transaction with them? What was done your first financial transaction?

A. The first transaction that I ever transacted, it was necessary to deposit to their credit money required by them for margin on which they would execute these contracts or orders. There was never any credit extended, never any asked by me and there was never any intention on their part or mine to speculate any further, or any more than the amount of money by me—

Mr. Oglesby: We object to what he says were the intentions of Thorn & Maginnis.

The Court: Yes, I think it should be limited to his intention.

Mr. McDonough: As I understand, the court permitted Mr. Thorn,—and I know I objected to it, I am not sure how the court ruled, they wanted Mr. Thorn to give his opinion as to whether Thorn & Maginnis expected him to deliver cotton or receive cotton.

The Court: As I remember, he was not asked as to what Mr. Brown intended. He did testify that if the contracts had been kept up, maintained to the time, to the expiration of the period which they covered, that the cotton would have been delivered. Now I do not recall that he was asked anything that pertained to the intention of Mr. Browne.

Mr. McDonough: I will ask him the exact question as I recall it, and then the Court can rule on it.

Q. Mr. Browne, I wish you would state whether or not there was anything in any of the correspondence, including the telegrams, letters and any other correspondence between you and Thorn & Maginnis, which indicated or lead you to believe that Thorn & Maginnis expected to deliver any cotton
327 to you, or to receive any cotton from you?

Mr. Cravens: Objected to.

Mr. McDonough: As I recall it, that was the question which the court permitted Mr. Thorn to answer.

Mr. Cravens: We withdrew that question and asked him their intent.

The Court: That is my recollection, that part of it was excluded on your objection and the question as to whether there was anything in the letters or in the correspondence that lead them to believe so and so, or indicated what his desire was, what Mr. Browne's desire was, was eliminated and they were

limited to what Mr. Thorn's intention was, and what his belief was.

Mr. McDonough: I offer to show that his answer would be "Nothing".

Mr. Cravens: Objected to.

The Court: Sustained and your exception noted.

Q. Mr. Browne, did you send to Thorn & Maginnis, or deposit in the bank for their credit one thousand dollars at about September 22, 1916? A. I did.

Q. Where was that deposited?

A. At the Bank of Crowder, Okla. is my recollection.

Q. Did you intend by these transactions shown in these telegrams and testified about by the witness, to comply with, or did you have any knowledge of the rules and regulations of the New Orleans Cotton Exchange?

A. I did not; I didn't know that they had a book of rules.

Q. Did you have any intention to receive any of the cotton at all or deliver any?

A. I certainly did not have any intention.

Q. Did you have any intention to deliver any of the cotton?

A. I did not.

328 Q. Did you have any cotton at that time?

A. Well, I was farming some.

Q. Say in September, September 22nd, or any time in September when you sold cotton on the New Orleans Cotton Exchange, state what amount, if any cotton you had on hand?

A. I don't know that I had any. I may have been interested with renters in some cotton on my farms.

Q. About how much cotton, if it had all been gathered, would you have had on hand, say the middle of December or first of January?

A. Well, I would probably have had a fourth interest in 75 or 80 bales, perhaps. I couldn't recall exactly, but in that neighborhood.

Q. During that whole season, you would have had, if it had been separated, something in the neighborhood of 20 bales? A. I think in the neighborhood of that.

Q. At the time you gave those selling orders along in September and October, did you have a large amount of cotton, as much as 200 or 300 bales on hand and were you hedging against that? A. I did not.

Q. What was your purpose in selling the contracts or futures? A. It was to speculate on the market.

Q. What was your purpose in buying the futures or contracts that you bought?
A. I was speculating the same way.
Q. You have heard the letters that have been read here?
A. Yes, sir.

The Court: I wish you would have him state what he means by speculate?

Q. State what you mean by speculate.
A. Well, that is a term that I have heard used in referring to buying and selling futures for speculation, in order to try to make money out of it.
329 Q. Go further if you can, and tell how you would make money out of it?
A. If I would buy, I would buy with the hope or prospect of cotton advancing and I could sell it at a greater price and reap a profit. Or, if I would sell I would think,—or some times they would advise me in the letters or telegrams that it was a good time to sell.

Mr. Cravens: That is objected to.

Mr. McDonough: It is the rule established by them.

Mr. Cravens: He is attempting to testify as to what they advised him by letter and telegram, and the contents of those letters and telegrams speak for themselves.

The Court: He may answer.

Mr. Cravens: Save our exception.

Q. Go ahead and complete your answer Mr. Browne?
A. Well, for instance, some times telegrams would indicate a tip—

Mr. Cravens: That is objected to.

The Court: He may answer.

Mr. Cravens: Excepted to for the same reason.

A. (Continuing) If the information received in the telegram would cause me to believe that the market might advance, or might decline, I some times would accept that as a tip to buy or to sell and act on those tips, I reckon I would call it, about what the market might do.
Q. I will ask you with reference to exhibit 117 which is already in testimony, dated January 29, 1917, the first telegram sent to you, as shown by that letter reads: "Market still unsettled, easily influenced either way. Some disappointment

over Kaiser's speech. Weather satisfactory". You seem to have sent a telegram following that saying "Buy four
330 May". Were you influenced in sending that telegram by the telegram received from Thorn & Maginnis?

Mr. Cravens: Objected to.

The Court: He may answer.

Mr. Cravens: Exception.

A. At this time from memory I don't recall whether I was influenced by this particular telegram to buy or not. Frequently I acted on those in those transactions, I did act on information given me by them as to the conditions and what they thought was best to do, whether to buy or sell.

Q. I show you exhibit 113 in which their first telegram to you dated January 25, reads: "Political influences temporarily less potent, better feeling spots, speculation dormant. Advances meet fresh liquidations". And then on the same date, and apparently following that you say: "Buy two May". Can you recall whether the telegram received from them influenced you as to that particular transaction?

A. I should judge—

Mr. Cravens: Unless he has some recollection about it, I don't think he ought to state it. He said he judged it did.

The Court: The point is Mr. Browne to state the facts and not state your judgment as formed at this time, but the judgment as formed at that time.

A. Your Honor, from memory to remember those transactions right now four years ago, just which ones I acted on in that way, I couldn't do it.

The Court: The difficulty is not the point. It may be difficult or it may not be difficult, but the fact remains just the same. That is the question put to you.

A. Except by reference to those statements or telegrams—

331 The Court: You have a right to refer to those statements and telegrams to refresh your memory, of course.

By Mr. McDonough:

Q. Before you answer that I want to call your attention to the preceding exhibit 112 in which telegram is sent to you reading: "Ginnings as expected, somewhat better undertone on less political anxiety. Reactions probable, but likely prove

temporary." Then your telegram follows that: "Buy two May stop two fifteen loss". Now the question is whether those are the messages that you refer to as influencing you either to buy or sell?

A. If I sent this message after receiving that, I did act on that advice.

Q. Now, Mr. Brown, I want to ask you about these telegrams you have checked over, have you not?

A. Well, I have checked them.

Q. Are these telegrams that you received through the Western Union from Thorn & Maginnis relating to these transactions? A. They are.

Mr. McDonough: I now offer them in testimony.

Mr. Cravens: Those that do relate to the transactions, we have no objection to.

The Court: I can't tell.

Mr. Cravens: I want to inquire of Your Honor if we do it this way. We object to the introduction of all telegrams that are piror in date to these telegraphic orders to purchase the particular 2,000 bales of cotton over which, and about which this law suit is brought. Now the first purchase of that cotton is in January, and those telegrams of October, November, December and any previous date had no relation to it, according to our theory.

The Court: I understand, Mr. McDonough, that you
332 are introducing those telegrams upon the question of course of dealing?

Mr. McDonough: Yes, sir, and for the purpose of showing the purpose of the parties.

The Court: The objection will be overruled.

Mr. Cravens: Save our exceptions. We save our exception to the admission of all telegrams except those that refer specifically to the 2,000 bales over which this law suit is brought?

The Court: And that is the only objection that you make to them?

Mr. Cravens: Yes.

Q. How much cash did you put up with Thorn & Maginnis including all the transactions from September 22 down to February 1?

A. I will have to refer to the statement. $17,500.00.

Q. How much, if any, did they remit to you?
A. Eight thousand dollars.
Q. Mr. Browne, when you began those transactions were you familiar with the meaning of terms used in the cotton Exchange, meaning of the terms?
A. I was not. I don't know that I am now, but I have learned some more about it. I never was in New Orleans.
Q. You never were in the Cotton Exchange at all?
A. No, sir.
Q. Not even in the City of New Orleans? A. No, sir.
Q. Have you ever been on the Cotton Exchange anywhere?
A. I have not. I would like to state the information I had from these men when I started in—

Mr. Cravens: That is objected to.

Mr. McDonough: We offer the statements made by the man who solicited Mr. Browne to do business with Thorn & Maginnis.

The Court: I understand that Mr. Thorn admitted
333 that he had a man he sent out?

Mr. Cravens: I don't remember it so at all.

Mr. McDonough: The man solicited Mr. Browne to do business with Thorn & Maginnis. Now Mr. Browne did not know his name, as I understand it, and the question I am asking him to state the things said by that man. If those are not admissible I do not care to go on.

The Court: You are assuming that he was a man acting for Thorn & Maginnis. I think that has to be established. I think it could be fairly established that the man did represent Thorn & Maginnis by their authority. He couldn't represent them on his own initiative. They would have to give him the authority. The objection is sustained.

A. I didn't get to fully state—

The Court: The objection is sustained as to anything the man said to you.

A. It was as to putting up margins.

The Court: Then it is not admissible, no matter what it is.

Q. Now, Mr. Brown, I wish you would state what your dealing was with Thorn & Maginnis as to whether or not you were liable for anything beyond the margins which you put up?

Mr. Oglesby: It is objected to unless he can connect it up in some way.

The Court: How do you mean connect it up?

Mr. Oglesby: My understanding is that he thought he was liable for nothing beyond his margins.

The Court: I think he can answer that.

Q. Go ahead and answer the question.
A. The information I received and my understanding—

The Court: The point is what you thought as to whether or not you were liable in any way beyond the margins?
334 A. I certainly did not.

Q. Had they closed out contracts for you previously?
A. They had.
Q. Had they notified you at various times that your margins were getting low? A. Yes.
Q. And had you put up money at their request?
A. I had; it was optional with me. I could put it up or leave it to them to do what they pleased.
Q. Where would you put the money up?
A. In the banks to their credit.
Q. In what bank? A. City National Bank here.
Q. How much did you put in the City National Bank here?
A. The majority of this money was put in the City National Bank. I think the first transaction or two was put in the Bank of Crowder.
Q. State whether or not it was all, except the thousand dollars put in the bank at Crowder, put in the City National Bank of Fort Smith?
A. I think it was all put up except the first transaction.
Q. Was it deposited to the credit of Thorn & Maginnis in the City National Bank? A. It was.
Q. Did you have anything to do with the drawing it out?
A. I did not.
Q. Did Thorn & Maginnis draw it out themselves?
A. I don't know. It was placed to their credit and I had to put it there before they would execute an order.
Q. And that was in the City National Bank of Fort Smith?
A. Yes, sir.
Q. And at that time did you live in Arkansas?
A. Yes, sir.
335 Q. Now Mr. Browne, it appears that some of these telegrams were sent from Crowder and other places?

A. Well, I was frequently at Crowder at my farm and when I would be over there if I would wire from there, they would answer me there. They would wire me there or wherever I might be.

Q. Mr. Browne, I wish you would state what your own worth was in 1916 and 1917, during the time of these transactions? That might be an embarrassing question but I think it is material in this case?

A. I really owed a good deal and had a good deal of property.

Q. Give your best judgment as to what your property was worth after deducting the debts?

A. Well, I think I would have to figure on that a while before I could give an answer.

Q. I want you to do it before you get off the stand?

A. I would probably have to refer to my books at that time.

Q. State whether or not you had means enough to buy and pay for the amount of cotton that those cotton contracts that were bought for you called for?

A. Oh, I didn't have the means to.

Mr. Cravens: The plaintiffs object.

The Court: He may answer.

A. I don't suppose I had enough to pay for a hundredth part of it, as far as that is concerned, of all that cotton.

336 "Ex. 171, J. K. P.

Received at 2:08 P. M. 10/9 1916
Dated New Orleans La, 9th.
To Fred Browne, Crowder, Okla.

Kindly deposit four hundred dollars advise and have bank wire.

(signed) THORN & MAGINNIS"

---

"Ex. 172, J. K. P.

Received at 3 P. M. Crowder 10/9 1916

Dated Ex New Orleans La. 1:43 pm 9th.
To Fred Brown, Crowder, Okla.

No reply call insufficient margin carry over unless deposit must close.

(signed) THORN & MAGINNIS"

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"Ex. 173, J. K P.

Received at 2:10 pm Crowder 10/9 1916
Dated New Orleans La.
To Fred Browne, Crowder, Okla.

line reported with drawing ocean rates submarine activity depressing shipping likely react on cotton.

(signed) THORN & MAGINNIS"

---

"Ex. 174, J. K. P.

New Orleans La. 10-13
Fred Browne
Fort Smith

Bot five Jany 07 Offerings light

(signed) THORN & MAGINNIS"

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"Ex. 175, J. K. P.

New Orleans La. 10-13
Fred Browne,
Ft. Smith, Ark.

Our message should have read bought two Jan 05 and three 07 instead of five at 07

(signed) THORN & MAGINNIS"

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"Ex. 176, J. K. P.

New Orleans, La. 10/19
Fred Browne
Crowder, Okla.

sold five Jan 87 on stop Eighteen cents.

(signed) THORN & MAGINNIS"

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"Ex. 177, J. K. P.

New Orleans La.
Fred Browne,
Crowder, Okla.

Contracts seem passing weaker hands interior advices report country merchant speculators load up.

(signed) THORN & MAGINNIS"

---

"Ex. 178, J. K. P.

New Orleans, La.
Fred Browne,
Crowder, Okla.

Bot one Jan 86 and four 87 bot five Dec. 76

(signed) THORN & MAGINNIS"

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"Ex. 179, J. K. P.

New Orleans La.
Fred Browne,
Ft. Smith, Ark.

Sold Five Jan 75 on Stop

(signed) THORN & MAGINNIS"

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337 "Ex. 180, J. K. P.

New Orleans La. Oct. 25, 1916
Fred Browne,
McAlester, Okla.

Sold 5 Dec. nineteen cents no grading yet in September. 2:00 P. M.

(signed) THORN & MAGINNIS"

---

"Ex. 181, K. J. P.

New Orleans La 2 Noon 30th
Fred Browne
Crowder, Okla.

Sold four July eight-teen fifty four less bullish enthusiasm.

(signed) THORN & MAGINNIS" 128 PM

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"Ex. 182, J. K. P.

New Orleans 935 AM Oct. 30th 1916
Fred Browne, Crowder, Okla.

Bot two Jan 26 heavy liquidation Liverpool.

(signed) THORN & MAGINNIS" 1119 AM

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"Ex. 183, J. K. P.

New Orleans, La. 11/4/16
Fred Browne

Bot two Jan 40 quiet market undertone steady

(signed) THORN & MAGINNIS"

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"Ex. 184, J. K. P,

New Drleans La. 11/10/16
Fred Browne,
Ft. Smith, Ark.

Bot two May 38 here sold two May 65 NY

(signed) T & M 145p

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"Ex. 185, J. K. P.

New Orleans La. Nov. 10 1916
Fred Browne
Fort Smith, Ark.

Bot one Jan 18 and three 19 declined sympathy Liverpool recovered south buying

(signed) THORN & MAGINNIS".

---

"Ex. 186, J. K. P.

New Orelans La 156 P 11/10/16
Fred Browne,
Ft. Smith

Your net credit all contracts closed forty three hundred forty five dollars.

(signed) T & M 159 p

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"Ex. 187, J. K. P.

New Orleans, La. 11/10/16
Fred Browne

Sold four Jan nineteen cents on stop

(signed) THORN & MAGINNIS"

"Ex. 188, J. K. P.

New Orleans La 1233pm Nov 10/16
Fred Browne
Ft. Smith, Ark.

Long two may New York short two may Orleans long four Jan Orleans ledger credit fifty six hundred and twenty dollars.

(signed) THORN & MAGINNIS"
1240 pm

"Ex. 189, J. K. P.

New Orleans La 11/10/16
Fred Browne,
Ft. Smith

Your account four Jan Long entering stop sell nineteen cents.

(signed) THORN & MAGINNIS"

338 "Ex. 190, J. K. P.

New Orleans, La. 11/16
Fred Browne,
Ft. Smith, Ark

Sold six Jan 19 cents on stop

(signed) THORN & MAGINNIS"

"Ex. 191, J. K. P.

"Ex. 192, J. K. P.

New Orleans La 11/10/16
Fred Browne,
Ft. Smith, Ark.

Bot two March 26

(signed) T & M" 2p

"Ex. 193, J. K. P.

New Orleans La. 11/10/16
Fred Browne,
Fort Smith, Ark.

Bot 2 Jan 06

(signed) THORN & MAGINNIS" 1046 a

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"Ex. 194, J. K. P.

New Orleans La 11/15/16 1153 AM
Fred Browne, Crowder, Okla.

Bot 2 Jan 47 Liquidation seems on increase

(signed) THORN & MAGINNIS".

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"Ex. 195, J. K. P.

New Orleans 145 pm Nov. 15 1916
Fred Browne,
Crowder, Okla.

Advanced on Norden estimate eleven million eight including linters big spot interest buying March

(signed) T And M" 355pm

---

"Ex. 196, J. K. P.

New Orleans La 118p Nov 15th 1916
Fred Browne
Crowder Okla.

Kindly deposit six hundred dollars advise and have bank wire.

(signed) THORN & MAGINNIS"
325 pm

---

"Ex. 197, J. K. P.

New Orleans La.
Fred Browne,
Crowder, Okla.

Advanced sympathy liverpool reported trade Buying market nervous very speculative looks higher.

(signed) THORN & MAGINNIS"

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"Ex. 198, J. K. P.

New Orleans La 135 pm Nov. 17th 1916
Fred Browne,
Crowder, Okla.

Sold 4 Jan 70 on stop

(signed) THORN & MAGINNIS"
156 pm

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339 "Ex. 199, J. K. P.

New Orleans 2pm Nov. 17th 1916

Fred Browne, Crowder, Okla.

Sold two March twenty cents on stop.

(signed) THORN & MAGINNIS"

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"Ex. 200, J. K. P.

New Orleans La.

Fred Browne
Ft. Smith, Ark.

Bot two Jan nineteen seven chicago herald says Wilson wins.

(signed) THORN & MAGINNIS"

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"Ex. 201, J. K. P.

New Orleans, La. 11/18/16

Fred Browne,
Ft. Smith, Ark.

Bot four Jan 87 New York wires south shows no weakness and advises purchases.

(signed) THORN & MAGINNIS" 933a

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"Ex. 202, J. K. P.

New Orleans La. Nov 21 1916
Via Crowder Okla.

Fred Browne
Care Cotton Exchange Ft. Smith Ark.

Sold 4 January thirty one stop Ginners nine six fifteen

(signed) T & M" 1250pm

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"Ex. 203,J. K? P.

New Orleans Nov. 22 1916

Fred Browne
Crowder Okla.

Market meeting more cotton advances except more two sided fluctuations

(signed) THORN & MAGINNIS"

1215 pm

---

"Ex. 204, J. K. P.

New Orleans La. Nov. 21st
via Ft. Smith Ark Nov. 22 1916

Fred Browne,
Crowder, Okla.

Heavy general liquidation today belief present prices high enough time being spot interests New York large sellers leading bull interest tried stem tide but support not sufficient absorb selling scattered long underlying conditions still sound but technical position market suggest advisability caution following advance just now but all depends spots—

(signed) THORN & MAGINNIS"

425 pm

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"Ex. 205, J. K. P.

New Orleans La 23rd.

Fred Browne- Crowder Okla.

Liverpool and lealing bulls New York heavy sellers today outside longs absorbed offerings reaction theory tone very nervous with sentiment more reactionary depends spots technical position much improved by liquidation and without weakness interior holders decline likely prove temporary if however spots weaken further decline likely.

(signed) THORN & MAGINNIS"

917 PM

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"Ex. 206, J. K. P.

New Orleans La., Nov. 24th 1916

Fred Browne, Crowder, Okla.,

Prompt stoppage Dec notices here New York imparted better tone todays market which absence continued liquidation developed steady tone and recovered partial loss recent advance advices indicate Russian interests hold principal long interest Dec Jan both markets and in position protect situation spots dominant factor market looks more two sided.

(signed) THORN & MAGINNIS"

730 AM

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"Ex. 207, J. K. P.

New Orleans La Nov 953 AM 24th 1916

Fred Browne, Crowder, Okla.,

Sold 3 March 36 New York 8000 notices out here and 2500 New York all apparently stopped.

(signed) T & M****1127AM

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"Ex. 208, J. K. P.

New Orleans La 1024 AM Nov. 24th 1916

Fred Browne, Crowder Okla.,

Bot 2 March 50 New York on open stop

(signed) T & M****1122 AM

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"Ex. 209, J. K. P.

New Orleans La Nov. 1025 AM 25th

Fred Browne Crowder Okla.,

Bot 3 March twenty one cents on New York stop

(signed) T & M----1035 AM

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"Ex. 210, J. K. P.

New Orleans La 943 a Nov 29 1916

Fred Browne,
Crowder Okla.

Shorts covering pending holiday finding little for sale offerings light.

(signed) THORN & MAGINNIS" 1237pm

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211 "Ex. 211, J. K. P.

New Orleans La Dec. 1, 1916

Fred Browne,
Ft. Smith, Ark.

Bot four Jan Ninety

(signed) THORN & MAGINNIS" 1123AM

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"Ex. 212, J. K. P.

New Orleans La 1130 AM Dec. 1 1916

Fred Browne
Ft. Smith, Ark.

Ledger credit now seventeen hundred seventy five dollars

(signed) THORN & MAGINNIS" 1158AM

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"Ex. 213, J. K. P.

New Orleans La Dec. 1 1916

Fred Browne,
Ft. Smith, Ark

Bot 4 Jan 69 on close

(signed) T & M "

---

"Ex. 214, J. K. P.

New Orleans La. Dec. 1 1916

Fred Browne,
Ft. Smith, Ark.

Sold 4 Jan 80 and stop

(signed) "T & M"

341

---

"Ex. 215, J. K. P.

New Orleans La. 1040 AM Dec. 2 1916

Fred Browne,
Ft. Smith, Ark.

Sold two March 99

(signed) T AND M" 1112 AM

---

"Ex. 216, J. K. P.

New Orleans La 1028 AM Dec. 2 1916

Fred Browne
Ft. Smith, Ark.

Sold Two March 99 rallied on week end coverings

(signed) THORN & MAGINNIS" 1109 AM

---

"Ex. 217, J. K. P.

New Orleans La Dec. 2nd.
via Ft. Smith

Fred Browne,
Crowder, Okla.

While underlying conditions favorable outside demand subsided cotton must therefore bull itself depends spots.

(signed) THORN & MAGINNIS" 1pm

---

"Ex. 218, J. K. P.

New Orleans La 909 A Dec. 2 1916

Fred Browne
Ft. Smith, Ark.

Sold four Jan 59 stop liquidation of yesterday still in evidence

(signed) THORN & MAGINNIS" 915 A

---

"Ex. 219, J. K. P.

New Orleans, La Dec. 4 1916

Fred Browne,
Fort Smith, Ark.

Liverpool today reflected impending political changes which caused weakness American Markets induces much scattered liquidation. Tone early somewhat unsettled but good demand on declines which checks aggressive selling. Spot advises indicate holders indifferent and without weakness actual decline contract values likely prove temporary.

(signed) THORN & MAGINNIS"

835 PM

---

"Ex. 220, J. K. P.

New Orleans La 1217 PM. Dec. 4 1916

Fred Browne
Ft. Smith, Ark.

You are six March short with stops two at 96 and four twenty cents

(signed) THORN & MAGINNIS"

1226 PM

---

"Ex. 221, J. K. P.

New Orleans La

Fred Browne,
Ft. Smith, Ark.

Sold two march 86 Liverpool unfavorabley effected by political changes.

(signed) THORN AND M"

---

"Ex. 222, J. K. P.

New Orleans La. Dec. 5, 1916

Fred Browne, Ft. Smith, Ark.

Sold 5 March 57 on stop

(signed) T & M" 1024 A

342

---

"Ex. 223, J. K. P.

New Orleans La Dec. 5, 1916

Fred Browne
Ft. Smith, Ark.

Sold Four March 57 National Ginners Ten Three less outside support more conservation noticeable.

(signed) THORN & MAGINNIS"

1120AM

---

"Ex. 224, J. K. P.

New Orleans La 1253 p Dec. 5, 1916

Fred Browne,
Ft. Smith, Ark.

Bot four march 62 stop shorts covering and buying by old bulls caused advance.

(signed) T AND M"

1256PM

---

"Ex. 225, J. K. P.

New Orleans, La. 920 AM Dec. 5 1916

Fred Browne
Ft. Smith Ark.

Bot six March sixty seven on stop looks like liquidation over

(signed) T AND M"

931AM

---

"Ex. 226, J. K. P.

New Orleans La. 148 p Dec. 5 1916

Fred Browne
Ft. Smith, Ark.

Bot two Jan 36 shorts covering

(signed) T AND M"
153 p

---

"Ex. 227, J. K. P.

New Orleans La 1128 AM Dec. 5th 1916

Fred Browne,
Ft. Smith, Ark.

Wall street liberal seller call money ten percent some talk weak spots lower if develops

(signed) THORN & MAG" 1147am.

---

"Ex. 228, J. K. P.

New Orleans La 10am Dec. 5th 1916

Fred Browne, Ft. Smith, Ark.

New York says national ginners ten three to Dec first indicating crop eleven four without linters.

(signed) THORN & MGINNIS"
1022 AM

---

"Ex. 229, J. K. P.

New Orleans La Dec. 5th via Fort Smith Ark 6th

Fred Browne
Cotton Offices, Crowder Okla.

Adverse political conditions abroad reported easier today's market but offerings well taken at decline spot holder reported refusing meet weakness contract markets but little demand spots in evidence late strength due belief congress will authorize increase freight rates as recommended by the President market fairly well liquidated and in position respond favorable developments-

(signed) THORN AND MAGINNIS"
253 pm



---

"Ex. 230, J. K. P.

New Orleans La 948 a Dec. 5, 1916

Fred Browne,
Ft. Smith, Ark.

Bot 5 March 67 New York says market looks oversold.

(signed) T & M" 958 a

---

"Ex. 231, J. K. P.

New Orleans La 132 pm Dec 6th 1916

Fred Browne Crowder Okla.

Sold two Jan 51 stop war insurance Liverpool increased two per-cent

(signed) THORN & MAGINNIS"

212pm

---

"Ex. 232, J. K. P.

New Orleans La 1214 pm Dec. 6th 1916

Fred Browne
Crowder, Okla.

Bot two Jany 61.

(signed) THORN AND MAGINNIS"

210pm

---

"Ex. 233, J. K. P.

New Orleans La 1058 am Dec 6th via Ft. Smith 6

Fred Browne
Crowder Okla.

Eased on sinking American steam-ship John Lambert without warning.

(signed) T AND M

1206 pm

---

"Ex. 234, J. K. P.

Crowder Okla. 12/7

New Orleans 12/6

Fred Browne
Crowder

Late cables denote more favorable political situation abroad leading spot interests Liverpool shorts principal buyers less selling pressure through tendency even up commitments pending government estimate still apparent technical position market much improved but all depends spots reliable interior advices indicate spot holders refusing meet decline sentiment mixed looks higher.

(signed) THORN & MAGINNIS" AM

---

"Ex. 235, J. K. P.

New Orleans La 1011 AM Dec. 7th 1916

Fred Browne Crowder, Okla.

Bot one Jan 54 and one Jan 53

(signed) THORN & MAGINNIS" 1114 AM

---

"Ex. 236, J. K. P.

New Orleans La 7th via Ft. Smith Ark 7th

Fred Browne, Crowder Okla.

Scalping market pending reports locals included sell former bulls confident.

(signed) THORN & MAGINNIS" 1116 AM

---

"Ex. 237, J. K. P

New Orleans La 1055 AM Dec. 8th 1916

Fred Browne,
Crowder Okla.

Sold two Jan 1910 per instructions Muskogee.

(signed) T AND M 146pm

---

"Ex. 238, J. K. P.

New Orleans 1130 am Dec. 8th 1916

Fred Browne,
Crowder Okla.

Liquidation persistent on Rallies less confidence government estimate sustaining small estimates look lower.

(signed) THORN & MAGINNIS"

1246pm

---

"Ex. 239, J. K. P.

New Orleans La 912 AM Dec. 8 1916

Fred Browne,
Muskogee, Okla.

Opened lower weakness Liverpool ginning about sixty thousand larger expected undertone nervous.

(signed) THORN & MAGINNIS"

958 AM

---

"Ex. 240, J. K. P.

New Orleans La 925 AM Dec. 8 1916

Fred Browne,
Muskogee Okla.

Sold Four March 47

(signed) T AND M" 1042 AM

---

"Ex. 241, J. K. P.

New Orleans La Dec. 8th 1916

Fred Browne, Crowder, Okla.

Heavy general liquidation today uncovered unprotected stops causing acute weakness and consequent decline failure leading bulls support market and unsettled political situation abroad tends intensify bearish sentiment which growing but all depends spots advices interior indicate holders nervous but unwilling sellers technical position market much improved but disposition await government estimate apparent.

(signed) THORN & MAGINNIS" 855AM

---

"Ex. 242, J. K. P.

New Orleans La 903 AM Dec. 8 1916

Fred Browne,
Muskogee Okla.

Market open lower did nothing Please give new stop opens ginners 10359

(signed) T AND M
916 AM

---

"Ex. 243, J. K. P.

New Orleans La 935 A Dec. 8 1916

Fred Browne
Muskogee Okla.

Have entered fifteen point stop March instructions not clear January Please repeat.

(signed) T AND M" 1019A

---

"Ex. 244, J. K. P.

New Orleans La. 1035 AM Dec. 9th 1916

Fred Browne,
Crowder, Okla.

Bot 2 March 49

(signed) T & M" 1109 AM

---

345 "Ex. 245, J. K. P.

New Orleans Dec 9th 950 AM
Fred Browne, Crowder, Okla.

Continued liquidation likely unless spots hold very steady politics unsettleling New York says some bulls support but looks heavy.

(signed) THORN AND MAGINNIS" 10AM

---

"Ex. 246, J. K. P.

New Orleans La 1190 A Dec. 11 1916
Fred Browne, Ft. Smith, Ark.

Sold two March 41 and two 39 stops government estimate out one oclock out time.

(signed) THORN AND MAGINNIS"
913 A

---

"Ex. 247, J. K. P.

New Orleans La 10 16 AM Dec. 11 1916
Fred Browne,
Ft. Smith, Ark.

Bot 5 March 27 please deposit additional to make seven dollars Bale over report.

(signed) THORN & MAGINNIS"
1025 AM

---

"Ex. 248, J. K. P.

New Orleans La 139 Pm Dec. 11 1916
Fred Browne, Ft. Smith, Ark.

March 70 after call entered stop forty five your limit 1710 please deposit thousand additional carry over

(signed) T & M"
150 PM.

---

"Ex. 249, J. K. P.

New Orleans La 818 A Dec. 11 1916
Fred Browne,
Ft. Smith, Ark.

Bulls supporting now but liquidation still coming out and may force lower.

(signed) T AND M" 925 A

---

"Ex. 250, J. K. P.

New Orleans La 145 P Dec. 11 1916
Fred Browne,
Ft. Smith, Ark.

Account now five hundred March long

(signed) THORN AND MAGINNIS" 150 P

---

"Ex. 251, J. K. P.

New Orleans La 948 A Dec 11 1916
Fred Browne,
Ft. Smith, Ark.

Sold four March 39 stop liquidation continues market nervous over political conditions.

(signed) THORN & MAGINNIS"
945 AM

---

"Ex. 252, J. K. P.

New Orleans La 921 A Dec. 11 1916
Fred Browne
Ft. Smith, Ark.

Bot four March 54 bulls supporting but liquidation still coming out.

(signed) THORN & MAGINNIS"
927A

---

346 "Ex. 253, J. K. P.

New Orleans La Dec. 11 1916
Fred Browne,
Ft. Smith, Ark.

Sorry order already executed on stop and advised.

(signed) THORN AND MAGINNIS"
1012 AM

---

"Ex. 254, J. K. P.

New Orleans La 1143 Dec. 11 1916
Fred Browne,
Ft. Smith, Ark.

Please deposit fifteen Hundred have Bank wire before Bureau

(signed) THORN AND MAGINNIS
1147 AM

---

"Ex. 255, J. K. P.

Crowder, Okla. Dec. 9, 1916
Thorn & Maginnis,
New Orleans La

Buy two March New Orleans stop ten loss.

(signed) FRED BROWNE,

---

"Ex. 256, J. K. P.

New Orleans La Dec. 13 1916 933 am
Fred Browne
Ft. Smith, Ark.

Bot 2 March 21 Liverpool action probably indicates serious consideration peace terms by allies.

(signed) T & M"

---

"Ex. 257, J. K. P.

New Orleans La 958 A Dec. 13, 1916
Fred Browne,
Ft. Smith, Ark.

Bot 4 Jan 69

(signed) T AND M" 1013 AM

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"Ex. 258, J. K. P.

New Orleans La 1008 A Dec. 13, 1916
Fred Browne,
Ft. Smith, Ark.

Sold 4 Jan 54 stop nervous erratic market due politics peace proposals which Liverpool cables skeptical about.

(signed) THORN AND MAGINNIS"
1025 AM

---

"Ex. 259, J. K. P.

New Orleans La 1010 A Dec. 13, 1916
Fred Browne,
Ft. Smith, Ark.

Heavy continental and American selling in Liverpool market nervous unsettled over politics.

(signed) T AND M" 1021 A M

---

"Ex. 260, J. K. P.

New Orleans La 1045 A Dec. 13, 1916
Fred Browne,
Ft. Smith, Ark.

Sold four May 02 weight of Liverpool selling making itself felt.

(signed) THORN AND MAGINNIS"
1050 AM

---

347 "Ex. 261, J. K. P.

New Orleans La 1050 A Dec. 13, 1916
Fred Browne,
Ft. Smith, Ark.

Make sale four May read 05 instead 03

(signed) T AND M" 1118 A

---

"Ex. 262, J. K. P.

New Orleans La 1145 A Dec. 13 1916
Fred Browne,
Ft. Smith, Ark.

Bot two March 79

(signed) T AND M" 1149 AM

---

"Ex. 263, J. K. P.

New Orleans La 155 PM Dec. 13, 1916
Fred Browne,
Ft. Smith, Ark.

Bot two March 82

(signed) T AND M
159 PM

---

"Ex. 264, J. K. P.

New Orleans La Dec. 13 1916 940 AM
Fred Browne,
Ft. Smith, Ark.

Sold seven march eighteen cents on stops best could do on sudden break.

(signed) THORN AND MAGINNIS"

---

"Ex. 265, J. K. P.

New Orleans La 1112 A Dec. 13, 1916
Fred Browne,
Ft. Smith, Ark.

Bot four May 1820 on stop

(signed) THORN AND MAGINNIS"
1123 A

---

"Ex. 266, J. K. P.

New Orleans La 140 p Dec. 14 1916
Fred Browne,
Ft. Smith, Ark.

Kindly deposit eight hundred dollars advise and have bank wire

(signed) THORN & MAGINNIS"
145 p

---

"Ex. 267, J. K. P.

New Orleans La Dec. 1 1916
Fred Browne,
Ft. Smith, Ark.

Early strength due showing Liverpool scattered short covering later cases pressure selling induced belief current prices discount situation and report interior spot owners more willing sellers latter unconfirmed but feeling to-s night reflects disposition even up commitments pending government estimate underlying conditions practically unchanged but fear financial complications checks aggressive support.

(signed) THORN & MAGINNIS"
940 pm

---

"Ex. 268, J. K. P.

New Orleans La Dec. 16 1916
Fred Browne,
Ft. Smith, Ark.

Bot two March 94 spot news bullish politics the principal influence at moment.

(signed) T & M"

---

348 "Ex. 269, J. K. P.

New Orleans La 955 AM Dec. 18, 1916
Fred Browne,
Ft. Smith, Ark.

Many feeling something may develop peace Liverpool cables better spot market to pressure liquidation futures Hamburg American line issued circular soliciting freight after peace.

(signed) THORN & MAGINNIS"
1005 AM

---

"Ex. 270, J. K. P.

New Orleans La 12-18
Fred Browne,
Ft. Smith, Ark.

Bot two march seventy

(signed) THORN AND MAGINNIS"

---

"Ex. 271, J. K. P.

New Orleans La 150 PM Dec. 18, 1916
Fred Browne,
Ft. Smith, Ark.

Please give our call prompt answer before close.

(signed) THORN & MAGINNIS"
158 PM

---

"Ex. 272, J. K. P.

New Orleans La 12-20
Fred Browne,
Ft. Smith, Ark.

Bot one march 82 please have bank confirm deposit at once.

(signed) T & M"

---

"Ex. 273, J. K. P.

New Orleans La Dec. 20 1916 1103 AM
Fred Browne,
Ft. Smith, Ark.

Cancel last report. Purchase march 82 only bot one hundred.

(Signed) T & M"

---

"Ex. 274, J. K. P.

New Orleans La 1015 AM Dec. 20 1916
Fred Brown,
Ft. Smith, Ark.

Kindly deposit Eighteen hundred dollars advise and have bank wire must have reply

(signed) THORN AND MAGINNIS
1023 AM

---

"Ex. 275, J. K. P.

New Orleans La 12-20 1052 A M
Fred Browne,
Ft. Smith, Ark.

Bot one March 82 please have bank confirm deposit at once market unsettled still at sea pending political developments and spot markets caution operations advisable.

(signed) THORN AND MAGINNIS"

---

"Ex. 276, J. K. P.

New Orleans La 950 A Dec. 21 1916
Fred Browne, Ft. Smith, Ark.
Bot 1 March 09

(signed)THORN AND MAG"
955A

---

349 "Ex. 277, J. K. P.

New Orleans La 1pm Dec. 21 1916

Fred Browne,
Ft. Smith, Arkansas

Sold five March 1640 on stop

(signed) T & M

108 PM

---

"Ex. 278, J. K. P.

New Orleans La 1155 A Dec. 21 1916

Fred Browne,
Ft. Smith, Ark.

Bot two March 71

(signed) T AND M CO"

1224 PM

---

"Ex. 279, J. K. P.

New Orleans La 933 Dec. 21 1916

Fred Browne
Ft. Smith, Ark.

Improved on President Wilsons Peace Note expectation conference will result undertone much improved.

(signed) THORN & MAGINNIS"

956 AM

---

"Ex. 280, J. K. P.

New Orleans La 2 PM Dec. 21 1916

Fred Browne,
Ft. Smith, Ark.

Sold two Mch 95 insufficient margin.

(signed) T AND M"

203PM

---

"Ex. 281, J. K. P.

New Orleans La 1135 AM Dec. 21 1916

Fred Browne,
Fort Smith, Ark.

Sold one march 84 stop eased on ticker fact American rights being invaded nearness war ourselves largely responsible for Wilson note.

(signed) THORN AND M"

1148 AM

---

"Ex. 282, J. K. P.

New Orleans La 1133 AM Dec. 22 1916

Fred Browne,
Ft. Smith, Ark.

Your ledger credit thirty dollars New York wires drastic liquidation about over and short interest created.

(signed) THORN & MAGINNIS"

1141 AM

---

"Ex. 283, J. K. P.

New Orleans La 147 PM. Dec. 22 1916

Fred Browne,
Ft. Smith, Ark.

Bot two March sixteen cents stop still unsettled but looks healthier than heretofore.

(signed) THORN & MAGINNIS"

158PM

---

"Ex. 284, J. K. P.

New Orleans La 930 AM Dec. 23 1916

Fred Browne,
Ft. Smith, Ark.

Distressed cotton seems liquidated depends politics and spots after a good rally may expect slow liquidation as
350 market comes under influence new crop preparation

(signed) THORN & MAGINNIS

947A

---

"Ex. 285, J. K. P.

New Orleans La 955 AM Dec. 23 1916

Fred Browne,
Ft. Smith, Ark.

Bot one March sixteen thirty and one thirty one shorts covering pending holidays

(signed) THORN & MAGINNIS

1005 AM

---

"Ex. 286, J. K. P.

New Orleans La 1038 AM Dec. 26 1916

Fred Browne,
Ft. Smith, Ark.

Sold two May 87 on stop

(signed) T AND M"
1042 AM

---

351 "Ex. 286, J. K. P.

Received at 13 DA PO 7

New Orleans, La. 1036 AM Dec. 26, 1916.

Fred Browne, 042, Ft Smith Ark

Sold two March 65 on stop

(signed) T AND M. 1040 AM

Telephoned to Fred Browne, at 1041

by MC".

---

"Ex. 287, J. K. P.

Received At 20 DA D 5

New Orleans La 1134 AM Dec. 26, 1916

Fred Browne, 054 Ft Smith Ark.

Bot 3 May 78.

(signed) THORN AND MAGINNIS 1139 AM."

---

"Ex. 288, J. K. P.

Received At 41 A D 8

New Orleans La 1259 PM Dec 26 1916

Fred Browne 072 Ft Smith Ark

Bot one may 85 one 86.

(signed) T AND M 106 PM."

---

"Ex. 289, J. K. P.

Received At 3DA D 5

New Orleans La 925 AM Dec 26 1916

Fred Browne 026 Ft Smith Ark

Bot two May 92.

(signed) T AND M 929."

---

"Ex. 290, J. K. P.

Received At 8DA D 14

New Orleans La 930 AM Dec 26, 1916

Fred Browne 030 Ft Smith Ark.

Market still unsettled nervous understand spots not pressing undert one improving reported notices being stopped.

(signed) THORN AND MAGINNIS 944 AM

Telephoned to Brown at 945 AM by JT."

---

"Ex. 291, J. K. P.

Received At 34 DAD 23

New Orleans La 137 PM Dec 26 1916

Fred Browne 077 Ft Smith Ark

We bot one May 85 one 86 on your order May now 94 dont understand what you mean about November.

(signed) THORN AND MAGINNIS 142 PM."

---

"Ex. 292, J. K. P.

Received At 21 DA D 7

New Orleans La 1135 AM Dec 26 1916

Fred Browne 055, Ft Smith Ark

Sold three May 75 on stop.

(signed) THORN AND MAGINNIS. 1140 AM."

---

"Ex. 293, *J.* K. P.

3 da re 5 916 am

ex New Orleans La Dec 27 1916

*Fred Browne* Ft Smith Ark.

Bot two May 06.

(signed) T. & M."

---

252 "Ex. 294, *J.* K. P.

Received At 41 da y 5

New Orleans La 1154 AM Dec 27 1916

*Fred Browne* 663 Ft Smith Ark

Bot two May at nineteen.

(signed) THORN AND MAG. 1157 Am."

---

"Ex. 295, *J.* K. P.

Received At 13 DA T 12

New Orleans La 929 AM Dec 27 1916

*Fred Browne* 625 Ft Smith Ark

Small holiday market higher prices seem necessary draw spots out undertone improving.

(signed) THORN AND MAGINNIS 929 AM."

---

"Ex. 296, *J.* K. P.

Received At 26 Da y 7

New Orleans La 1256 PM Dec 29 1916

Fred Browne, 699 Ft Smith Ark

Sold five May 50 on stop

(signed) T AND M 1261 PM"

---

"Ex. 297, J. K. P.

Received At 22DAKN 11

New Orleans La 1112 AM Dec 28 1916

Fred Browne 072 Ft Smith Ark

Sold six may 65 stop advance bit rapid for permanency.

(signed) THORN MAGINNIS. 1120 AM."

---

"Ex. 298, J. K. P.

Received At 41 DA D 9

New Orleans La 130 PM Dec 28 1916

Fred Browne 108 Ft Smith Ark

Sold two May 1730 on stop.

(signed) THORN AND MAGINNIS 140 PM."

---

"Ex. 299, J. K. P.

3 da re 11 914 a

CX New Orleans La Dec 28 1916

Fred Browne Ft Smith Ark.

Bought four May 57 please have bank confirm deposit early.

(signed) T & M."

---

"Ex. 300, J. K. P.

Received At 23DAKN 6

New Orleans La 1113 AM Dec 28 1916

Fred Browne 073 Ft Smith Ark

Sold six May sixty on stop.

(signed) THORN AND M. 1122 AM."

---

353 "Ex. 301, J. K. P.

Received At 28 DA Y 5

New Orleans La 1140 AM Dec 28 1916

Fred Browne 083 Ft Smith Ark

Bot five May 66.

(signed) THORN AND MAGINNIS. 1145, AM."

---

"Ex. 302, J. K. P.

3 ds hn 17.

New Orleans La. 920 AM Dec 28th 1916
Fred Browne, Ft Smith, Ark.,

Press reports british government require 85 percent space shipping after Jan. first no selling pressure noticeable.

(signed) THORN & MAGINNIS. 932 AM."

---

"Ex. 303, J. K. P.

To

Bot 2 May 24 stop selling spool before close affected American market."

---

"Ex. 304, J. K. P.

Received At 14 DA D 15,

EX New Orleans La 1005 AM Dec 28 1916

Fred Browne 054 Ft Smith Ark

Steadiness spots growing belief Germanys Peace movement more trade and public buying seems cause advance.

(signed) THORN AND MAY. 1013 AM."

---

"Ex. 305, J. K. P.

Received At 35 DA PO 11

New Orleans La 1230 PM Dec 28, 1916

Fred Browne 097 Ft Smith Ark

Reported all freight room withdrawn here and New York by British Government.

(signed) THORN AND MAGINNIS 1235 PM."

---

"Ex. 306, J. K. P.

Received At 38 DA D 5

New Orleans La 108 PM Dec 28 1916

Fred Browne 102 Ft Smith Ark

Bot two May at Forty.

(signed) THORN AND MAGINNIS. 113 PM."

---

"Ex. 307, J. K. P.

Received At 25 DA Y 17

New Orleans La 1130 AM Dec 28 1916

Fred Browne 082 Ft Smith Ark

Politics having unsettled influence Washington says Lansing denies receipt of supplementary note from Germany cause of weakness.

(signed) THORN AND MAGINNIS. 1136 AM."

---

354 "Ex. 308, J. K. P.

Received At 15 DA D 5

New Orleans La 1010 AM Dec 28 1916

Fred Browne 055 Ft Smith Ark

Bot two May 76.

(signed) THORN AND M. 1014 AM."

---

"Ex. 309, J. K. P.

To

Sold six May 65 stop advance bit rapid for permanency."

---

"Ex. 310, J. K. P.

To

Sold 6 May 60 on stop."

---

"Ex. 311, J. K. P.

Received At 13 da y 7

New Orleans La 1103 AM Dec 29 1916

Fred Browne 056 Ft Smith Ark

Bot two May 94 on stop.

(signed) T AND M. 1110 AM."

---

"Ex. 312, J. K. P.

Received At 8 DA D 9

New Orleans La 1022 AM Dec 29 1916

Fred Browne 041 Ft Smith Ark

Sold two May 1705 on stop.

(signed) T AND M. 1026 AM."

---

"Ex. 313, J. K. P.

Received At 12 da y 5

New Orleans La 1057 A Dec 29 1916

Fred Browne 052 Ft Smith Ark

Sold two May 84.

(signed) T AND M CO. 1101 AM."

---

"Ex. 314, J. K. P.

Received At 17 da y 12

New Orleans La 11 A Dec 29 1916

Fred Browne 059 Ft Smith Ark.

Owing to twenty point drop New York impossible do better on nineteen stop.

(signed) T AND M. 1121 AM."

---

"Ex. 315, J. K. P.

Received At 7 DA D 9

New Orleans La 1020 AM Dec 29 1916

Fred Browne 040 Ft Smith Ark

Sold two May 1722 on stop.

(signed) T AND M. 1025 AM."

---

355 "Ex. 316, J. K. P.

Received At 6 da y 10

New Orleans La 1008A Dec. 29 1916

Fred Browne 039 Ft Smith Ark

Bot two May 62 placing stop sell 22.

(signed) THORN AND MAGINNIS. 1013 AM."

---

"Ex. 317, J. K. P.

Received At b 5 DA D 5

Ex New Orleans La 925 AM Dec 29 1916

Fred Browne 034 Ft Smith Ark

Bot two May 29.

(signed) T AND M. 937 AM."

---

"Ex. 318, J. K. P.

1 Da 14

N O La 940A 12/29/16

Fred Browne Ex F. S.

Now said 85 percent includes cotton munition food think export situation been exaggerated.

(signed) T & M. 948A."

"Ex. 319, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.

27 DA D 16

New Orleans La 1057 Am Dec 30 1916

Fred Browne 043 Ft Smith Ark.

Bot two May 1719 Ledger credit thirty one hundred and twenty five dollars.

(signed) THORN AND MAGINNIS. 1105 Am."

"Ex. 320, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.

9DA Y 10

New Orleans La 918 AM Jan 3 1917

Fred Browne 035 Ft Smith Ark

Liverpool advanced covering cotton lost on Nestorian undertone continues improve,

(signed) THORN AND MAGINNIS. 921 AM."

"Ex. 321, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.

20 Dakn 14

New Orleans La 1103 AM Jan 3, 1917

Fred Browne 052 Ft Smith Ark

Sold two May 24 stop selling by Liverpool before close affected American markets.

(signed) THORN AND MAGINNIS. 1112 AM."

"Ex. 322, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.

10 Da Y 5,

New Orleans La. 922 AM Jan 3 1917

Fred Browne 036 Ft Smith Ark.

Bot two May 44.

(signed) T AND M. 925 AM."

356 "Ex. 323, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.

19 daln 19

New Orleans La 1113 Am Jan 4 1917

Fred Browne 049 Ft Smith Ark

Bot two May 34 Shrevesport report sale 1700 bales to Carolina mills basis eighteen cents.

(signed) T & M. 1120 AM."

"Ex. 324, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.

18 day 16

New Orleans La 1037A Jan 4 1917

Fred Browne 043 Ft Smith Ark

Featureless market traders sold on report National ginners eleven one later covered reported improvement interior spots.

(signed) THORN AND MAGINNIS. 1044 AM."

"Ex. 325, J. K. P.

1 da ns N O La 915A 1/5/1917

To Fred Browne Ex F. S.

Natl. ginners eleven naught four better demand Lpool spot markets steady.

(signed) T & M. 932A

(Phones 938 A 1/5/17.)"

"Ex. 326, J. K. P.

2 Da ns N O La 1/5/1917

To Fred Browne Ex F. S.

Bot 4 May 73.

(signed) T. & M. 1039A

(Phoned 1045A)."

---

"Ex. 327, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.

7 dakn 12

New Orleans La 927 AM Jan 6 1917

Fred Browne 033 Ft Smith Ark

Improved spot demand and hope peace seem stimulating factors technical position sound.

(signed) THORN & MAGINNIS. 940 AM."

---

"Ex. 328, J. K. P.

5 DA BN 5 1003AM

CX New Orleans La 1-6

Fred Browne Ft Smith Ark.

Bot five May eighteen cents.

(signed) T & M."

---

357 "Ex. 329, J. K. P.

N O La 1106 1/13 1917

To Fred Browne EX

Sold one May 70 & seven 65 on stop best could do on panicky market.

(signed) T. & M. 1114A."

---

"Ex. 330, J. K. P.

6 Da Bn 26 1027 AM

CX New Orleans La 1-6

Fred Browne, Ft Smith Ark.

Owing increased line and Monday holiday must have five dollars bale over night kindly deposit two thousand additional and have bank wire or instruct before close.

(signed) THORN AND MAGINNIS."

---

"Ex. 331, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.

13 da y 10

New Orleans La 953A Jan 8 1917

Fred Browne 031 Ft Smith Ark

Bot five may seventy two New York entered stop fifty two.

(signed) THORN AND MAGINNIS. 958 AM."

---

"Ex. 332, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.

19 day 25

New Orleans La 1108A Jan 9 1917

Fred Browne 040 Ft Smith Ark

Bot one July 74 four 77 New York entered spot 55 ledger credit five thousand one hundred and forty five dollars last night.

(signed) THORN AND MAGINNIS. 1115AM."

---

"Ex. 333, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.

6dakn 16

New Orleans La 10 AM Jan 9 1917

Fred Browne, 29 Ft Smith, Ark

New York wires trade good buyer on decline profit taking at Liverpool selling caused decline tone steadying.

(signed) THORN & MAGINNIS. 1011AM."

---

"Ex. 334, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.

6 dakn 5

New Orleans La 937 AM Jan 9 1917

Fred Browne 028 Ft Smith Ark

Bot 5 May 29.

(signed) T & M. 955 AM."

---

358 "Ex. 335, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.

8 dakn 16

New Orleans La 928 AM Jan 9 1917

Fred Browne 030 Ft Smith Ark

Selling at advance increasing while may work some higher seems sufficient for present ginnings as expected.

(signed) THORN AND MAGINNIS. 1006 AM."

---

"Ex. 336, J. K. P.

1 da ns N O La 140P 1/9/1916

To Fred Browne Ex F. S.

Bot 5 May 62.

(signed) T. & M. 142P."

---

"Ex. 337, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.
5 Da D 8
New Orleans La 9092M Jany 9 1917
Fred Browne 022 Ft Smith Ark
Sold ten May 1820 stop.
(signed) T AND M" 920AM."

---

"Ex. 338, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.
4 da y 11
New Orleans La 904A Jan 10 1917
Fred Browne 035 Ft Smith Ark.
Sold five May 35 on 42 stop on opening.
(signed) T & M. 910AM."

---

"Ex. 339, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.
32 Da X 13
New Orleans La 130 PM Jan 10 1917
Fred Browne 079 Ft. Smith Ark
No special news outside withdrawal freights Liverpool sentment turning big operators agains market.
(signed) THORN AND MAGINNIS. 141 PM."

---

"Ex. 340, J. K. P.

8 Da BN 23 1135 AM
NO New Orleans La 1-10
Fred Browne Ft Smith Ark.
Sold five may 80 two July 80 and three 79 New York on stops market very nervous and erratic professionals selling.
(signed) THORN AND MAGINNIS."

---

"Ex. 341, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.
6 da D 13
New Orleans La 916 AM Jany 10 1917.
Fred Browne 037 Ft Smith Ark.

Still two sided market large eastern operators selling advance bit rapid for permanency.

(signed) THORN AND MAGINNIS 927A M."

359

"Ex. 342, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.
10 dakn 19
New Orleans La 946 AM Jan 10 1917
Fred Browne 044 Ft Smith Ark

New York wires trade buying on this decline good outside delland also wall street principal supply expect market to improve.

(signed) THORN & MAGINNIS. 952 AM."

"Ex. 343, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.
17 dakn 8
New Orleans La 1108 AM Jan 10 1917
Fred Browne 055 Ft Smith Ark

Sold ten may 45 on stop here.

(signed) THORN & MAGINNIS. 1116 AM."

"Ex. 344, J. K. P.

B 1 Da Ns N O La 920A 1/11/1917
To Fred Browne Ex F. S.
Bot one May 03.

(signed) T. & M. 926A."

"Ex. 345, J. K. P.

1 da ns. N O La, 1028 A 1/11/1917

To Fred Browne Ex F. S.

Sold 1 May 89.

(signed) T & M. 1034 A."

---

"Ex. 346, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.

6 DAKN 16

New Orleans La 952 AM Jan 11 1917

Fred Browne 027 Ft Smith Ark

Uncertain political developments likely have had bad effect while May go some higher think sale on bulges.

(signed) THORN AND MAGINNIS. 10 AM."

---

"Ex. 347, J. K. P.

16 ds hn 24

New Orleans La 1140 AM Jan 11th 1917

Fred Browne, Ft Smith, Ark.,

Bot two May 04 one 05 placing stop on three to sell two 89 one 90 if incorrect answer quick.

(signed) THORN & MAGINNIS. 1150 A.M."

---

"Ex. 348, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.

21 Da X 7

New Orleans La 135 PM Jan 11 1917

Fred Browne 064 Ft Smith Ark

Sold Three May 90 on stop.

(signed) T & M. 139 PM."

---

360 "En. 340, J. E. P.

Received At 16 South Sixth Street, Ft. Smith, Ark.

? DARK ?,

New Orleans La 956 AM Jan 11 1917

Fred Browne 629 Ft Smith Ark

Sold one May 60 on ship.

(signed) T AND M 1001 AM."

"En. 350, J. E. P.

Received At 16 South Sixth Street, Ft. Smith, Ark.

16 DARK 9

New Orleans La 1135 AM Jan 11 1917

Fred Browne 661 Ft Smith Ark

Bot 1 May 1956 on ship.

(signed) T AND M. 1142 AM."

"En. 351, J. E. P.

Received At 16 South Sixth Street, Ft. Smith, Ark.

20 Do 9 16

New Orleans La 1256 PM Jan 12 1917

Fred Browne 685 Ft Smith Ark

Bot 3 May 60 working on May Get Order saying got proper differences.

(signed) T AND M. 100 PM."

"En. 352, J. E. P.

Received At 16 South Sixth Street, Ft. Smith, Ark.

2 Duke 12

New Orleans, La 925 AM Jan 12 1917

Fred Browne 651 Ft Smith Ark

Politics eliminating factor no immediate prospect peace outlook grows worse hope cut.

(signed) THOMAS AND MARGARET 105 AM."

"Ex. 353, J. K. P.

29 DS 24 New Orleans La 233 PM Jan 12 1917

Fred J Brown Ft Smith Ark

Draft just received to meet same and protect open contracts present requirements necessary you deposit sixteen hundred dollars promptly and have bank wire answer.

(signed) THORN & MAGINNIS, 247P."

---

"Ex. 354, J. K. P.

N O La 923 1/12/1917

To Fred Browne Ex F. S.

Bot 5 May 15.

(signed) T & M. 925A."

---

"Ex. 355, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.

21 DA D 14

New Orleans La 102 PM Jany 12 1917

Fred Browne 066 Ft Smith Ark.

Bot five May 1808 sold five October 1682.

(signed) THORN AND MAGINNIS. 107 PM."

---

361 "Ex. 356, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.

17 DA D 13

New Orleans La 1010 AM Jany 13 1917

Fred Browne 054 Ft Smith Ark

Steady on better spot demand higher basis without unfavorable political developments probably improve.

(signed) THORN AND MAGINNIS. 1020 AM."

---

"Ex. 357, J. K. P.

B 1 Da ns N O La 926 A 1/13/1917

To Fred Browne Ex F. S.

Largely professional market supply floating contracts limited outside trading small eratic & nervous.

(signed) T & M. 945 A."

---

"Ex. 358, J. K. P.

B 2 DA ns N O La 1018 A 1/13/1917

To Fred Browne E X

Kindly deposit eight hundred dollars advise & Have bank wire.

(signed) T. & M. 1029"

---

"Ex. 359, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.

2 DA Y 12

New Orleans La 925 AM Jan 16 1917

Fred Browne 027 Ft Smith Ark

Peace influences subsiding public less interested seems sale on rallies for present.

(signed) THORN AND MAGINNIS. 934 AM."

---

"Ex. 360, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.

810DAKN 11

New Orleans La 910 AM Jan 17 1917

Fred Browne 043 Ft Smith Ark

Liverpool probably effected by developments Greece undertone not good looks lower.

(signed) THORN AND MAGINNIS. 1003 AM."

---

"Ex. 361, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.

1 DAKN 13

New Orleans La 1018 AM Jan 17 1917

Fred Browne 046 Ft Smith Ark

Liverpool heavy seller presumably activity German raiders South Atlantic sinking twenty one ships.

(signed) THORN AND MAGINNIS 1032 AM."

---

362 "Ex. 362, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.

9 DA D 9

New Orleans La 925 AM Jany 18 1917

Fred Browne 021 Ft Smith Arkansas

Recoveries meet fresh liquidation likely continue so eather favorable.

(signed) THORN AND MAGINNIS. 938 AM."

---

"Ex. 363, J, K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.

6 DA D 10

New Orleans La 915 AM Jany 19 1917

Fred Browne 031 Ft Smith Ark

Kindly deposit one thousand dollars advise and have bank wire.

(signed) THORN AND MAGINNIS. 925 AM."

---

"Ex. 364, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.

11 da po 15

New Orleans La 1040 AM Jany 19 1917

Fred Browne 046 Ft Smith Ark

Reported Loverpool cotton exchange promulgated order prohibiting speculation and buying abroad except by spot interests.

(signed) THORN AND MAGINNIS. 1049 AM."

---

"Ex. 365, J. K. P.

11 ds hn 13

Ex New Orleans La 935 AM Jam 20th 1917

F Browne Ft Smith Ark

Market takes concerted selling poorly liquidation fearing increase submarine activity responsible for decline.

(signed) T & M. 950 AM."

---

"Ex. 366, J. K. P.

2 DA hs N O La 1040 A 1/22 1917

To Fred Browne Ex

Sold five May 29 on stop poor recuperative power looks lower.

(signed) T & M. 1055 A."

---

"Ex. 367, J. K. P.

13 DA BN 6 108 PM

CX New Orleans La 1-22

Fred Browne, Ft Smith, Ark.

Sold five may twenty on stop.

(signed) THORN AND MAGINNIS."

---

363 "Ex. 368, J. K. P.

16 DABN 5 152 PM

CX New Orleans La 1-22
Fred Browne Ft Smith Ark

Bought five May 39

(Signed) T & M."

---

"Ex. 369, J. K. P.

I Da ns NO La. 958A 1/22 1917
To Fred Browne EX

Bot five May 44 expect temporary but not permanent reaction gradually lower.

(signed) THORN & MAGINNIS 1021 A."

---

"Ex. 370, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.
8 DA D 11
New Orleans La 920 AM Jany 22 1917
Fred Browne 024 Ft Smith Arkansas

Underlying conditions together acute shipping situation likely force lower sentiment unsettled.

(signed) THORN AND MAGINNIS 934 AM."

---

"Ex. 380, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.
10 DA Y 9
New Orleans La 933A Jan 22 1917
Fred Browne 028 Ft Smith Ark

Bot five October 1550 on stop.

(signed) T AND M 944 AM."

---

"Ex. 381, J. K. P.

4 Da ns N O La 1230 P 1/23 1917
To Fred Browne EX

Bot two May 69.

(signed) T & M 128 P."

---

"Ex. 382, J. K. P.

DA Ns N O La 1012 A 1/23 1917

To Fred Browne EX

Bot 2 May 47.

(signed) T & M. 1018 A."

"Ex. 383, J. K. P.

B 1 Da ns N O La 9 2a 1/23 1917
To Fred Browne EX

Ginnings as expected somewhat better undertone on less political anxiety reactions probable but lively prove temporary.

(signed) T & M. 929 A."

364 "Ex. 384, J. K. P.

12 da re 5 1250 P
CX New Orleans La Jan 22 1917
Fred Browne Ft Smith Ark.

Bought five May 35.

(signed) T. & M.

"Ex. 385. J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.
6 da y 5
New Orleans La 941 A Jan 23 1917
Fred Browne 037 Ft Smith Ark

Bot two May 49.

(Signed) T and M. 948 AM."

"Ex. 386, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.
21 D A D 19
New Orleans La 148 PM Jany 23 1917
Fred Browne 075 Ft Smith Ark

Kindly deposit fifteen hundred additional and have bank wire as requiring at least five dollars bale over night answer.

(signed) T AND M. 159 PM."

"Ex. 387, J. K. P.

B 2 Da Ns N O La. 952 1/23 1917

To Fred Browne E X

Sold two May 34 on stop.

(signed) T & M. 958 A."

---

"Ex. 388, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.
24 DA VO 9
New Orleans La 112 PM Jan 24 1917
Fred Browne 063 Ft Smith Ark

Bought five May 73 and five 74.

(signed) T AND M 118 PM."

---

"Ex. 389, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.
13 Da D 11
New Orleans La 936 AM Jany 24 1917
Fred Browne 023 Ft Smith Ark

Small market Texas wires spot demand increasing weather favorable sentiment mixed.

(signed) THORN AND MAGINNIS. 945 AM."

---

"Ex. 390, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.
34 DA D 10,

New Orleans La 215 PM Jany 24 1917
Fred Browne 072 Ft Smith Ark

Kindly deposit one thousand dollars advise and have bank wire.

(signed) THORN AND MAGINNIS 225 PM."

---

365 "Ex. 391, J. K. P.

I DA Ns N O La 1053 A 1/24 1917

To Fred Browne EX

Sold five May 1650 on stop.

(signed) T & M. 1057 A."

"Ex. 392, J. K. P.

B 1 Da ns N O La. 1130 A 1/24 1917
To Fred Browne EX

Sold four May 55 stop market flooded with reports better spot demand but meets fresh selling all advances.

(signed) THORN AND M. 1145".

---

"Ex. 393 J. K. P.

1 Da ns. N O La. 139 P 1/25 1917
To Fred Brown E X

Bought four May 84.

(Signed) T & M. 143 P."

---

"Ex. 394, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.
25 DA D 5
New Orleans La 1122 AM Jany 25 1917
Fred Browne 058 Ft Smith Ark

Bot two May 83.

(signed) T & M. 1125 AM."

---

"Ex. 395, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.
14 DA Y 14
New Orleans La 935 AM Jan 25 1917
Fred Browne 037 Ft Smith Ark

Political influences temporarily less potent better feeling spots speculation dormant advances meet fresh liquidation.

(signed) THORN AND MAGINNIS 954 AM."

---

"Ex. 396, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.
3DA D 14,
New Orleans La. 935 AM Jany 26 1917
Fred Browne 028 Ft. Smith Ark

While market showing better tone business actual greatly restricted broad demand absent market thin.

(signed) THORN AND MAGINNIS. 945 AM."

---

"Ex. 397, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.
11DA D 21
New Orleans La 1040 AM. Jany 26, 1917
Fred Browne 047 Ft. Smith, Ark

While statistical position bullish absence spot demand and increasing difficulties surrounding shipping and new crop considerations renders any improvement difficult maintain.

(signed) S. N AND CO. 1103 AM."

---

366 "Ex. 398, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.
17 DA S. 14.
New Orleans La 113 P Jan 26, 1917
Fred Browne 068 Ft Smith Ark

New York wires rumored Germany likely come out with reasonable peace terms next two days.

(signed) THORN AND MAGINNIS. 132P."

---

"Ex. 399, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.
10DA D 13,
New Orleans La 920 AM Jany 27 1917
Fred Browne, 038 Ft Smith Ark

Strength coming from New York due peace rumors and report Russia approved Wilsons proposals.

(signed) THORN AND MAGINNIS. 928 AM."

---

Ex. 400, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.
17 DA Vo 5,
New Orleans La 1028 AM. Jany 27, 1917
Fred Browne 049 Ft Smith Ark

Bot two May 06.

(signed) T AND M. 1035 AM."

---

"Ex. 401, J. K. P.

ReceivedAt 14 South Sixth Street, Ft. Smith, Ark.
4 da y 14
New Orleans La 940A Jan 29, 1917
Fred Browne 027

Market still unsettled easily influenced either way some disappointment over Kaisers speech weather satisfactory.

(signed) THORN AND McGINNIS 950 AM."

---

"Ex. 402, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.
15 da y 13
New Orleans La 1130 A Jan 29 1917
Fred Browne 043 Ft Smith Ark

Reliable friend from Waco wires spot holders seem more disposed to sell today.

(signed) THORN AND MAGINNIS 1147 AM."

---

"Ex. 403, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.
22 da vo 5
New Orleans La 1255 PM Jan 29, 1917
Fred Browne 056 Ft Smith Ark

Bought three May eighty eight.

(signed) T AND M. 1PM."

---

367 "Ex. 404, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.
16 da y 9
New Orleans La 1143A Jan 29 1917
Fred Browne 044 Ft Smith Ark

Sold ten May 1685 on stop.

(signed T & M. 1148 AM."

---

"Ex. 405, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.
2 da s 15
New Orleans La 930 A Jan 29 1917
Fred Browne 025 Ft Smith Ark

Bought four May 08 please deposit two thousand additional and have bank confirm promptly.

(Signed) T & M. 940A."

"Ex. 406, J. K. P.

Received At 14 South Sixth Street, Ft. Smith, Ark.
8DA D 11
New Orleans La 930 AM Jan 30 1917

Fred Browne 028 Ft Smith Ark

Outside support small attitude spot holder dominating influence shorts principal support.

(Signed) THORN AND NAGINNIS 938 AM' "

"Ex. 407

Received At 14 South Sixth Street, Ft. Smith, Ark.
9 da vo 5
New Orleans La 958 AM Jan 30 1917
Fred Browne 031 Ft Smith Ark

Bot two May 93.

(signed) T AND M 1005 AM."

Cross-Examination

By Mr. Cravens:

Q. Are you the same Mr. Browne that owns the four story building here in town, white building?

A. I own the three story building.

Q. On the corner of Towson Avenue? A. Yes, sir.

Q. And the building that used to be the Opera House and now converted into a wholesale grocery house?

A. I don't own the Opera House at this time. It belongs to the Browne-Hinton Grocery Company of which I am a member.

Q. Who is the president of that company? A. I am.

Q. Have you any stores outside of the Grocery Company?

368 A. I have not.

Q. Have you any farms? A. I have.

Q. Where are they located and how many?
A. At Crowder, Oklahoma.
Q. And how many?
A. Well, there is the most of my land that adjoins; probably five or six farms.
Q. How many acres tillable?
A. Well, I have more than a thousand acres in cultivation at this time.
Q. Did you in 1916 deal in cotton? Did you buy any cotton?
A. I did not, not so far as I remember now.
Q. In 1915?
A. I would not be positive about 1915.
Q. Well you have been in the past engaged in the business of buying spot cotton? A. Yes.
Q. Where? A. At Crowder, Oklahoma.
Q. Now how long were you engaged in the business of cotton buyer?
A. I think I was in business there six or eight years.
Q. When did you close out?
A. If I am not mistaken in 1912 or 1913, I sold my store there.
Q. After you sold out didn't you continue in the business of buying spot cotton?
A. I don't think so. I was interested in a gin there at one time and may have bought some cotton, but I am not positive now.
Q. What size store did you carry there?
A. It was a country store, retail store.
Q. You did a furnishing business, did you not? A. Yes.
Q. To what extent did you do a furnishing business?
A. What do you mean?
Q. What was the size business, approximately, you did a year along about that time?
369 A. I would furnish to the farmers on time to the extent of about $15,000.00, or in the neighborhood of that.
Q. What volume of business did you do in the store?
A. Well, that is what I said.
Q. You mean that you only did all told cash and credit a fifteen thousand dollar business during the year?
A. No, I didn't mean that.
Q. What was the entire volume of business?
A. I couldn't state that except from my judgment; I have not figured on it.
Q. During all the time that you were engaged in the mercantile business, and a short while after, did you buy cotton

other than the cotton that was mortgaged to you from the tenants?

A. Some; never bought more than just a few hundred bales in any year.

Q. You say you commenced dealing in futures about when, about what year? A. With Thorn & Maginnis?

Q. No, sir; the first deal?

A. I said that I had one transaction.

Q. Well, when was that transaction?

A. That was several years ago; I couldn't give you the year.

Q. Who was it with?

A. Well, I will tell you who I put the money up with. Martine Theurer at Fort Smith, I put up a hundred dollars with him.

Q. Did you receive a confirmation of the sale?

A. I don't remember.

Q. Was it on the New York or New Orleans Exchange?

A. I believe it was New York.

Q. You don't know who he represented? A. No.

Q. Did he send the telegram in his name?

A. I don't know; I just give the check for $100.00 and
370 went on home.

Q. Now, later on you bought some more. About when was that?

A. Well, I think it must have been in 1915.

Q. 1915? A. I think so.

Q. Who did you buy that from?

A. It was H. & B. Beer, New Orleans.

Q. Now did you buy it through one of their agents, or did you send the money down there yourself?

A. I did just the same as I did this time, deposited the money and wired them.

Q. Who did you deposit it with?

A. Deposited the money in the bank and wired them it was at their credit and at the time wired them to execute the order.

Q. And you wired them to buy or sell? A. Buy, I believe.

Q. Did you write the telegram?

A. I expect I did.

Q. Do you remember what you said in that telegram?

A. No.

Q. When did you first learn what buy four May meant?

[A.] You have known that for a long time, haven't you?

A. No, about the time I commenced dealing here, Mr. Burba was dealing a good deal just before that, the year before I dealt with them, and just in talking with cotton men.

Q. Well, you had talked about it sufficiently to know how a transaction was conducted, didn't you?

A. Well, I had learned to wire to buy four May meant to buy four hundred May.

Q. You were also told that the man to whom you wired was a member of the Exchange, wasn't you? A. No.

Q. Didn't you know anything about the New Orleans Cotton Exchange at that time? A. No.

Q. Didn't you know how that contract would be executed? A. No.

371 Q. What did you think about it? Did you have any idea about it at all, about how they would buy you a hundred bales of cotton, or four hundred?

A. Yes, I thought I would put the money up, and if the market went up it would give me a profit.

Q. You didn't know that they would go on the Exchange and execute an order for you?

A. No, I don't know it now.

Q. Now they sent you a confirmation slip, I believe you stated? A. Yes, sir.

Q. On the confirmation slips, the first one you got, did you understand what it meant?

A. I may have, if you will let me see it.

Q. Did you read it?

A. I expect I did. I don't recall it right now. I am sure I did though.

Q. That was something new to you, wasn't it?

A. The first one I got was the first one I ever saw.

Q. So you naturally would have read it, wouldn't you?

A. Sure.

Q. Well, it said on that—they all say the same thing, don't they? A. I don't know.

Q. Statement of Purchase and Sale of 200 Bales Cotton March Delivery at New Orleans by Thorn & Maginnis for account of Mr. Fred Browne, subject to the By-laws, rules and regulations of the exchange where executed, subject to the United States Cotton Futures Act, Section Five. December 27, Bought 2; now you knew what 2 meant there, didn't you?

A. I knew that it meant 200; that was my understanding.

Q. And you take for instance this slip which says "Bought 2 at 16 even". That 16, what did that mean?

A. My understanding is that that meant that they bought 200 at 16 cents.

372 Q. There is no cents around there and you knew that that meant. sixteen cents. Now over there, December 22, it says: "Sold 2 16.05". What did you think that meant?

A. My understanding of that it was 16.05 per pound.

Q. Now you knew, or you learned very quickly after you received the first one what all these figures and terms used by the cotton trade meant, didn't you?

A. I don't know anything about their terms except I think I understand what those papers there meant.

Q. Do you remember who told you that?

A. I don't know that anybody told me. I could see the figures and read them.

Q. You kept up from the time you started, pretty well with the cotton market?

A. Yes, through letters and wires daily.

Q. During the time you were engaged actively in business —in the first place, for how many years have you been conducting a mercantile business?

A. Well, I have been in the mercantile business more or less for more than twenty years, not all the time.

Q. What business prior to 1916, were you engaged in outside of the mercantile business and farming?

A. I was handling cattle.

Q. Now you didn't go to school anywhere, or get any additional training from that time until you went into the wholesale grocery business, did you? A. No.

Q. Well, during the time you were in the mercantile business and furnishing people did you write your own mortgages?

A. Surely.

Q. Prepared your own deeds and notes and things like that? A. Not always; I may have done it some.

Q. You tell this jury that when you got this notice
373 subject to the by-laws, rules and regulations of the Exchange you were so slow that you didn't know what that meant, a business man of your ability at that time?

A. I already stated I thought I understood this paper.

Q. Then you did understand from the confirmation sent you by Thorn & Maginnis that they were buying for you on the New Orleans Exchange subject to its rules and regulations, cotton for future delivery?

A. No, I didn't. On the contrary, my understanding was there was never any cotton to be bought and sold.

Q. I understood you to say that you knew what that meant?

A. Just the same then as I do now.

Q. What is it?

A. It means I had a contract down there at a cost of 16 cents and closed it out at 16.05 which left a profit of $50.00.

Q. You were figuring to discover what the profit was?

A. That is what that sheet says.

Q. When a sheet came in with a loss on it, could you find out what that meant? A. Yes.

Q. You tell this jury that notwithstanding your experience, you didn't know that Thorn & Maginnis had purchased or sold cotton for you on the New Orleans Cotton Exchange?

A. I don't think they have ever bought any cotton for me, or sold any except just on the quotations there and speculations.

Q. You received notice all along from them, didn't you?

A. Yes.

Q. When you wired them "Buy four May" did you intend for them to buy 400 bales of cotton for May delivery?

A. I intended for them to buy on the market there at that price 400 bales.

Q. You intended them to do just what that telegram
374 said? A. Yes, sir.

Q. Then you didn't think they did it?

A. I think they did; I think they did exactly what I intended them to do, and what they intended.

Q. I understood you to say a while ago that you would deposit the money with them until the cotton went up and then take it down, and the profit?

A. I didn't say that.

Q. Then you expected them to buy, according to your directions, and now you say you think they did do it?

A. I think they executed the orders as they were intended by me.

Q. As they were directed in the telegram? A. Yes.

Q. When they said to you "We have bought for your account" you did not question but what they had ?

A. I don't understand that they bought any cotton in fact.

Q. You understood they never entered into a contarct with some reputable concern for the purchase of 400 bales of cotton to be delivered to you in May?

A. I didn't know how they did that until this trial came up and I heard his explanation. I expected I would put up the margin and risk that much. If it went down, I lost it. I expected they would execute their orders and if the cotton advanced I would get the profits. It was never my understanding that I would lose anything more than the margin. Nothing they ever said to me indicated it. If I lost the margin it was gone and I have no cry to make.

Q. In this complaint to this jury, in this case, you have asked the jury to give you $6760.00?

A. That is the complaint I believe. But first they have asked me for $23,000.00. I don't know but what that justifies

me in asking this. If they hadn't asked me for that I never would have asked them anything. I stated I lost it down
375 there with them and lost what I had put up there. It was my understanding that I was taking a chance and might lose it, and did lose, and made no request on them and no kick about it.

Q. Anything else you want to state? A. No, sir.

Q. You never met a member of the firm of Thorn & Maginnis until after this loss was sustained, did you?

A. I couldn't say whether he was a member of the firm or not?

Q. That is all you know, that a fellow who stated he was representing came to see you. Did you ever see this fellow before the trial? A. Not that I know of.

Q. Did you ever see Mr. Kehoe the partner who met you after this loss was sustained, and talked with you?

A. I did.

Q. Did you ever see him before that time?

A. No, not before I met him.

Q. Did you ever see, so far as you know, any other members of the firm?

A. I did not. It is not necessary to see them. I know that a negro, or anybody in the world can deposit a thousand dollars down here in the bank, and ask them to execute an order and they will do it. I have known them to do it.

Mr. Cravens: I object to that.

Mr. McDonough: I think it is competent, Your Honor. His statement is that anybody who would put money in the bank and wire them that it was there to their credit, and make an order they would execute it. It looks to me like that is admissible.

Q. Now how much did you think $2,000.000 margined?
A. Well, that varied at different times.
376 Q. Now what was it at the time you deposited it, made the first deposit in the Bank at Crowder?

A. I think they required around five dollars a bale at that time.

Q. A thousand dollars then would buy 200 bales?

A. Yes, sir.

Q. Now you discovered that out of the rules?

A. Yes, I had had letters to that effect from them.

Q. You mean at the time you put up the first thousand dollars you had had letters? A. Oh, yes.

Q. Where are they? A. I don't know.

Q. Have you got them in your possession?

A. I have not.

Q. You mean letters from this firm telling you that a thousand dollars would margin 200 bales of cotton?

A. Yes, five dollars a bale.

Q. Was that in the form of a personal letter or circular?

A. We, I think I had both. personal letters and circulars too for a good long while.

Q. During your contractual relations with them did you discuss the future market with any person here who knew about it?

A. I didn't get the question clear.

Q. I say during your contractual relations with this firm, during September, October, November, December and January, did you discuss the future contracts and the character of future contracts with anybody in Fort Smith that knew about it?

A. Knew the character,—I couldn't say that I did. I talked frequently and all the time about dealings and speculation in the cotton business all along during the time.

Q. Would you mind telling me with whom?

A. I don't know that I could tell you. I talked with
377 a number of persons.

Q. Mr. Barkdull, down here, the cotton man?

A. Well, I have talked with him. I don't know that I talked with him in regard to the dealings. Mr. Barkdull understood I was speculating on the market. I was in the exchange a good deal looking at the quotations and sent telegrams from there.

Q. And you tell this jury that after talking with the people with whom you did talk, that as a matter of fact, if valid and binding contracts were made for the sale and delivery of cotton on the New Orleans Cotton Exchange you never heard of it before? A. Before when?

Q. During the time you were buying and trading in cotton?

A. No, it was my understanding that was a place you could speculate down there when you wanted to. That has been my understanding all my life.

Q. You have never known the difference between a bucket shop and an exchange?

A. No, I couldn't say that I did.

Q. And you never have found it out?

A. No, not even now I don't know it. I don't know what you mean by bucket shop.

Q. You say that your idea was that as soon as the price of cotton reached a point to exceed the margin which you had put up, you thought you would be sold out?

A. I knew I would be sold out, before it would reach that point they would wire me and give me a chance to put up. If I didn't put up they would close me out.

Q. You knew that rule?

A. Sure, I think that is in these papers here. If it ain't, it is in some I did receive from them.

Q. You found that out, anyway? A. I did.

378 Q. It is in the confirmation slips sent out,—that statement?

A. I expect it is. I think it is in some of those papers.

Q. Mr. Browne, you didn't investigate and ask anybody what it meant, that cotton was purchased in accordance with the rules of the Exchange,—you didn't ask anybody about what that meant? A. No.

Q. And so you didn't know about it?

A. No, I didn't think or care anything about it. I understood I could take my profit if I wanted to, and if I lost I would lose my margin. I don't care anything about the rules down there, and didn't know that I would ever be interested in them.

Q. In so far as the firm of Thorn & Maginnis is concerned, you never at any time by letter, telegram or personally informed either member of that firm of your intention to gamble and not to deliver or accept the cotton bought or sold, did you?

A. I never told them I was gambling. I was speculating on the market.

Q. But you never told them what your intention was?

A. They knew better than I did.

Mr. Oglesby: We ask that that part of his answer be stricken from the record.

The Court: That will be stricken out.

Mr. McDonough: Save an exception.

Q. You stated in your direct examination that you were speculating, that you thought you could buy and then after you bought that you thought you could sell out. Now was that right? A. I think so.

Q. So you evidently knew, you know what buy and sell means, don't you Mr. Browne? A. I think so.

Q. So when you said a while ago that you thought the

379 manner of conducting the business was that you could buy, that meant buy 400 bales of cotton, didn't it, and then that you hoped you could sell it at a better price, now that is the way you expected the thing to go? A. Yes.

Q. And then sell it out when you got ready? If the price went high or went too low, the proposition was you thought you could sell it?

A. I had a right to close out any time I wanted to.

Q. Close out meant sell out?

A. Yes, sir, that is my understanding.

Q. Now did you talk with anybody about speculating in cotton, or get any more information about it after you started in than you had when you commenced?

A. No. It may be now, I didn't make any inquiries with reference to information, but I was talking to different ones dealing there and speculating just as I was, frequently. Of course I became more and more acquainted with the terms used about sending telegrams and those things, stop orders and all such things as that. When I first started in I didn't know what stop [mena] but I learned.

Q. How soon after you got into the game did you learn about stop? A. I couldn't say.

Q. About how long? A. Oh, it wasn't long.

Q. Just two or three days?

A. I found that out pretty quick.

Q. Now you sent them a telegram somewhere in January telling them to close out, or to sell some cotton, or to stop ten, or something like that, and they wrote you back that they couldn't stop at that point. Was that the first information you ever had that they couldn't stop when you said stop?

380 This is the letter of December 29th. This letter reads: "We beg to confirm telegrams passed between us today. We wish to refer you to your wire asking why your stop order 'Sell 200 May at 17.19 was executed at 17.05". Now at this time, did you not know that it might be impossible to execute your order at the very figure that you said?

A. I don't know that I did.

Q. Then you knew it from that time on, didn't you?

A. I knew it from that time on. I say before these times.

Q. You didn't know that when you said stop seventeen nineteen, that it might be impossible for them to sell at 17.19?

A. I don't know whether it was impossible or not.

Q. Didn't you know they might not be able to do it?

A. I couldn't say what they were able to do.

Q. Do you mean to tell this jury you didn't know?

A. I do.

Q. Did you investigate afterwards and discover that it was not possible to sell at the exact figure that you told them to sell at? A. When?

Q. After this letter was written? This letter says this: "We beg to say that as this limit was reached the market was subjected to another one of those [faiting] spells which have been so common of late, and as we started to execute your order at nineteen, there was a break of twenty points between trades in New York as received here. Our Mr. Coleman, who was at the ring side [at the ring side] at the time, endeavored in every way possible to sell at about your limit, but, owing, to the fact that New York had made such a serious decline, it was impossible to get a bid until the market reached 17.05 for May, at which price your stop order was executed".

A. There was a difference of thirteen points there between what they sold it at and what I wired them to, and I
381 took them to task about it. I didn't think that they had a right to do that, and that is their letter explaining why they did it.

Q. That is the letter informing you that they were unable to execute your stop order? A. That is what they said.

Q. You know if a man sells anything he has got to get somebody to buy it? A. Yes.

Q. So you never replied to that letter, did you?

A. I couldn't say.

Q. You accepted the explanation?

A. I accepted it. It was a small matter.

Q. Well, thirteen points, it is over a half dollar a bale?

A. Yes, sir.

Q. Twenty points is a dollar a bale? A. Yes, sir.

Q. Ten points would be a half dollar a bale.

A. I took the loss of that. The margin was up there and they deducted from the margin.

Q. Then listen: Do you want to tell the jury now that you thought there was no actual buying and selling cotton?

A. Yes, I think it yet.

Q. You don't think there is any [bying] or selling cotton but even after that time you felt you had been crooked out of a hundred dollars? A. I didn't say that.

Q. Well, did you? Did you think you had been cheated?

A. I don't know.

Q. Did you inquire? A. I did. I wrote a letter about it.

Q. And you received this reply? A. Yes.

Q. You say after you received this reply, did you think you had been cheated, or did you accept that as a truthful statement?

A. I accepted the statement. I quit it there and didn't
382 pursue it any further.

Q. You thought you had been treated all right?

A. I didn't know and so thought as it was only a difference of 13 points I would let it go.

Q. It was just a small matter?

A. $130.00 would be a small matter as compared with twenty-five or thirty thousand dollars.

Q. So you didn't care at that time?

A. I did care; I wrote them about it. If I didn't I wouldn't have written them.

Q. Mr. Browne, you say outside of the two orders that you gave before September 1916 for the purchase or sale of cotton, after that, this concern Thorn & Maginnis were the only ones with whom you dealt?

A. I don't believe I caught the question.

Q. I said I understood you to say that the two orders that you had given prior to [Septe,ber] 1916, that outside of those two, you never dealt in cotton futures except with the firm of Thorn and Maginnis. Is that true?

A. I think so. Two or three; it could [possible] be three.

Q. I will ask you if you didn't deal with H. & B. Beer and have some cotton for future delivery or receipt with them on February 1, 1917? A. Yes.

Q. I understood you to say that the two instances which you state prior to September 1916, and then the dealings that you had with Thorn & Maginnis were the only dealings you ever had in cotton futures?

A. No, I had some dealings about the time they closed me out.

Q. Now you had some dealings with H. & B. Beer, members of the New Orleans Cotton Exchange? A. Yes, sir.

Q. And you lost on the same date some money to them,
383 didn't you? A. Yes.

Q. On cotton contracts that you had? A. Yes.

Q. In all of the dealings that you have had in cotton futures this is the first time that you have plead the gambling proposition, isn't it?

Mr. McDonough: That is objected to, Your Honor.

The Court: On what ground do you claim that is competent?

Mr. Cravens: I will ask him one question before that. Are you in the habit of gambling?

Mr. McDonough: That is objected to.

The Court: On what ground do you think that is competent?

Mr. Cravens: I want to find out. This man is on cross-examination, any information that would disclose the character of man he is.

Mr. McDonough: If that is the attitude, I withdraw the objection.

The Court: Go ahead.

Q. I said: Are you a gambler? A. No.
Q. Did you ever gamble in cotton futures with anybody except Thorn & Maginnis?
A. I did. The transactions that I have mentioned, if you want to call it gambling.
Q. Tell us the term that you call it?
A. The term that usually applies to it is speculating.
Q. You don't call the buying and selling of cotton for future delivery gambling?
A. I don't know that I ever called it that. I think they use the term speculating.
Q. Mr. Browne, if as a result of your venture with Thorn & Maginnis, cotton had gone up the number of points
384 that it went down, would you have insisted that the contract was a valid one and that you were entitled to your profits?
A. I would not have insisted that it was a valid contract; I would have expected my profit. That was the understanding if I put up the margin they would give me the benefit of any advance in price.
Q. You paid your loss to H. & B. Beer?
A. Yes. I had the margin up with them just like I did with Thorn & Maginnis.
Q. I believe you say, or testified that you deposited with Thorn & Maginnis from time to time in the way of margins approximately $17,500.00?
A. In running over the figures there a while ago that is what I made it. I might be in error about that. I could check it up.
Q. How much did you draw from that firm?
A. Five thousand at one time and three thousand at another.
Q. I will ask you to look at the statement here which says October 26th. To Cash $5,000.00; November 13th, Cash $3,000.00; January 12th, Cash $5,000.00, and tell the jury which one of those charges against you is incorrect, if either of them are?

A. From this statement, there seems to be two $5,000.00 transactions. When I figured it a while ago I guess I must have got only one.

Q. Well, then you got $13,000.00 instead of $8,000.00?

A. According to that statement.

Q. Do you deny that statement is correct?

A. No, I overlooked that.

Q. After this loss was sustained you wired them wanting to know if they would accept one-tenth cash and the balance in monthly or yearly payments, didn't you? A. Yes.

Q. After that they wired you back to make it $2,000.00 and they would try to arrange the balance, and you wired them back you couldn't do it? A. Yes.

385

Q. And then Mr. Kehoe came out to see you? A. Yes.

Q. Did you say anything to Mr. Kehoe in your conversations with him about this being a gambling transaction and you having no intention to deliver that cotton?

A. I don't know that I did.

Q. Did you say one word about any former agreement that you had not to pay one dollar if you lost?

A. Yes, I told him the margin was all I was risking.

Q. Did you tell him about any agreement you had with any one? A. Yes, I told him.

Q. Was anybody present when you told him that?

A. No.

Q. Where did you tell him? A. Crowder City.

Q. You were off to yourselves?

A. Yes, we were to ourselves in all the conversations we had.

Q. Then I want to ask you this question: If somebody had agreed with you that you wasn't to pay anything except your losses, what made you telegraph them asking if they would take one-tenth cash and the balance in one-tenth payments, if you knew you didn't owe them a dime?

A. I will do my best to explain that to you. On the morning that I received this, February 1st I wired Thorn & Maginnis to sell my cotton, ten at 17.15 and ten at 17.20, I think in ten minutes after the time that the market should have opened that morning, they wired me that they had sold it at 14 cents, making a difference of some twenty-nine or thirty thousand dollars, taking up all my margin and some besides. I was, of course, naturally considerably confused and surprised to have a telegram of that kind after having just wired them to sell at 17.15 and 17.20. A while after I received the first telegram from them they began sending me telegrams to deposit this difference. I knew that my

386

understanding was from first to last, all the letters I had ever received, and all the dealings that I had with them indicated clearly that I was to put up a margin and was not liable further than that to speculate on this market. But they begin sending me these telegrams to deposit this difference, loss. As I said before, I was of course confused; that was a big thing and was unexpected and I hardly knew just what shape I had got into. I thought I would consult my attorney and see if it was possible that I could be liable to them for this loss, as they put it, or this difference. I went in to Mr .Cravens office to consult him about it. I think I put the question to him. I don't remember just exactly—

Mr. Oglesby: I am going to object to what he said if you are fixing to tell it.

A. (Continuing) Anyway there was several other parties in his office at that time. I didn't state to him the volume involved, nor how much I was interested. I simply stated the facts and the conditions. In other words, if I had put up a deposit would I be liable for further losses than the margin. Well, I was going to Crowder City that morning and Mr. Cravens being busy, said something about looking the law up further; something of that kind. My recollection is he didn't give me any definite answer anyway, so I said let it go, as he had other clients in there at that time. I hadn't had any dealings with lawyers here and when I got over to Crowder City, my attorney at McAlester who had represented me in other matters, I consulted over the telephone. I related the
387 circumstances to him. Going back to the telegram though,—I am going too fast there. As I said before, they were sending me these telegrams and I didn't know to what extent I might be liable, I didn't know, I didn't anticipate it, but since they were wiring me I did not know what kind of place I had got into. In the event it should have developed after I consulted lawyers, I sent this telegram. I didn't offer anything. I asked them would they accept one-tenth down and one-tenth annually, expecting in the event that I found that I was liable when I consulted attorneys, if they were willing to do that I would follow it up by making a settlement of that kind. As I said before, Mr. Cravens being busy, did not clearly give me the full information, and as I had to go to Crowder City, I went on out there that morning and I consulted my attorney at McAlester who informed me that there was no liability on my part.

Mr. Oglesby: Object.

The Court: He is giving a reason now for the answer to your question.

Mr. Cravens: This is something that happened afterwards?

The Court: I understand that has no probative force. It is in response to your inquiry. If you want the court to say to the jury that that has no probative force in the case, I will tell them that. This is simply in response to your question about what he did, giving an account of his actions.

Mr. Cravens: Your Honor, that is true. But he is telling what took place after this occurrence.

The Court: He has stated that he didn't make an offer; that it was a telegram of inquiry. I think probably
388 that is as far as his answer would be responsive, to that extent, and probably following that it would not be responsive. I am inclined to think that the objection was good after the sending the telegram and the reason that he gave for sending it.

Mr. Cravens: I want to ask just a question, if the Court will permit.

Q. Mr. Browne, you came to me and stated the proposition to me?

Mr. McDonough: That is exactly what you had excluded.

Mr. Cravens: What he objected to was what he learned from his attorney.

Q. I didn't give you any opinion at all, did I? I told you I couldn't tell you without looking it up? Isn't that what I told you?

A. I am not sure that that was the exact words.

Q. Wasn't that about the substance of it?

A. I think before you gave a definite opinion, you would look it up further, or something of the kind. I told you to let it go. I remember that when I came in from Crowder after that you called me up and said that they had consulted you on the other side.

Q. Wasn't this what I said: That the other side had sought to employ us to bring this suit, and as I had talked with you I didn't want to bring the suit without consulting with you, and you told me to go ahead, didn't you?

A. Yes, I had already employed Mr. Andrews.

Redirect Examination

By Mr. McDonough:

Q. When you sent the telegram "Sell ten seventeen fifteen stop, and ten seventeen twenty stop, "did you have any information or knowledge that Thorn & Maginnis could
389 sell your contracts at fourteen cents? A. I did not.

Q. In sending that telegram did you intend to authorize them to sell at 14 cents? A. I did not.

Q. Were you on that very date—

Mr. Cravens: I don't believe that is competent. Here he was dealing with the New Orleans Cotton Exchange and every transaction that passed between them in the way of confirmations, etc. said that these dealings were made subject to the rules of the New Orleans Cotton Exchange. Now if he didn't know that, that doesn't bind the other party. If he was dealing with a member of the New Orleans Cotton Exchange and that member was dealing on the exchange, he is bound under the law to know what the rules are. According to the written testimony here every confirmation that he had received, stated that these transactions were made subject to the by-laws and rules of the New Orleans Cotton Exchange, and even whether they did or not, he said he was dealing with them as members of the New Orleans Cotton Exchange, and the fact that he is ignorant would not save him from responsibility. The law charges him with notice of it.

The Court: I don't think the Wilhite case goes to that point. The question asked Mr. Brown is what he knew, or rather what he knew as to the authority given to Thorn and Maginnis. Now your answer to that is that he is bound by the rules. I think he can answer as to his knowledge of the rules. Now if he is bound by the rules of the Cotton Exchange that will be a matter to be covered by the instructions to the jury.

Q. I will ask you Mr. Browne, you have stated you got the notice from them ten minutes after the market opened showing that they had sold you out at 14 cents?

A. Yes, sir.

390 Q. State whether or not you had on that very date, and was at that very time, contemplating buying cotton contracts and not selling except at the price that you had authorized it to be sold for?

A. Well, I did contemplate and I think executed some orders with H. & B. Beer that day.

Q. At the price that prevailed after the opening on that morning? A. Yes, sir.

Q. You were then considering buying? A. Yes.

Q. After the market opened?

A. After the market opened down I certainly would have bought if I had dealt at all, and I certainly would not have been willing to turn loose of my holdings at that. In all previous instances in which the margin was being exhausted they had wired me. They could have wired me in this instance the condition of that market, and whether I wanted to let it go at that price.

Q. Did you get any notice?

A. I didn't. The first notice I got from them was the telegram saying they had sold at 14 cents and less than an hour before that I had wired them to sell at 17 cents.

By Mr. Cravens.

Q. Mr. Browne, there was nothing in Thorn & Maginnis selling out your contracts that prevented your buying all the contracts you wanted? A. No.

Q. It went down to 13 cents and you could have bought at 13 cents? A. Not through them.

Q. Well, you did have a broker though, H. & B. Beer? You could have bought through them any amount of cotton you wanted at 13 cents? A. I suppose I could.

391 Q. I will ask you if you didn't make your headquarters while in Fort Smith over at the Cotton Exchange?

A. I suppose I could have. As I said before, I was so flustrated after I got that telegram.

Q. But you could have bought it at a cent lower than you sold every pound? A. I don't know about that.

Q. Didn't you receive the messages from Thorn & Maginnis over at the Cotton Exchange over here on Rogers Avenue?

A. Yes.

Q. Didn't you make that your headquarters?

A. Not my headquarters.

Q. Didn't you stay there when you were in town?

A. I hung out there a good deal.

Q. They had a blackboard on the wall and they had telegraphic communication with New Orleans? A. Yes, sir.

Q. And they posted up the price every time there was a fluctuation? A. I don't know about every time.

Q. Any great fluctuation was noted on that blackboard right there in your presence?

A. After that happened I didn't stay there.

Q. Now Mr. Browne, you are trying to make this appear as the action of an inexperienced man. Don't you know that you had watched others do it and had done it yourself for twenty years? A. No, I never.

Mr. McDonough: The only objection I have to that it was gone over by Mr. Going.

Q. You say you sent your messages from the Cotton Exchange and went there? A. Yes.

By Mr. McDonough:

Q. You were asked by Mr. Cravens about the chance to
392 buy cotton at 13 cents. Did you on the first of February have any knowledge that cotton got as low as 13 cents? A. I did not at that time.

Q. You could have if you had sat in that room, couldn't you? A. I don't know.

Defendant closes.

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393 (Court's Instructions to the Jury and Exceptions thereto.)

Gentlemen of the Jury, the plaintiffs Thorn & Maginnis bring this suit against the defendant Fred Browne and allege in their complaint that defendant Browne is indebted to them by reason of the fact that Thorn and Maginnis at Browne's request, paid out money for Browne's benefit, and performed services for him. The transaction or transactions out of which the alleged indebtedness grew were carried out by Thorn and Maginnis in the purchase of cotton futures upon the New Orleans Cotton Exchange. Browne denies that he requested the plaintiffs to enter into any contract or contracts for him, or to pay out any money for his benefit. The defendant Browne also alleges that he is not liable on the contracts which plaintiffs allege they entered into for him at his request for the reason that such contracts were gaming transactions and were illegal and against public policy and are null and void.

You are instructed that the testimony shows that contracts were entered into by plaintiffs and if you find from the testimony that such contracts were for defendant's benefit, and entered into at his request, and that the money alleged in plaintiffs' complaint to have been paid out by them for defendant's benefit was actually paid out by them for that purpose, and that they performed the services which they allege that they performed, then you are instructed that plaintiffs should recover, unless you find that such contracts were gaming contracts. The burden of proof is upon the plaintiffs to show that they paid out the money alleged by them to have been paid out for defendant's benefit, and that they performed the services for him. The burden of proof is upon the defend-

ant to show that the contracts alleged to have been entered into by plaintiffs for his benefit were gaming contracts.

394 A contract for the sale of goods or commodities to be delivered at a future date is valid even though the seller has not the goods or commodities nor any other means of getting them than to go into the market and buy them, but such a contract is only valid where the parties intend or agree that the goods are to be delivered by the seller and the price to be paid by the buyer. If in the case of such a contract the real intent be merely to speculate in the rise and fall of prices and the goods or commodities are not to be delivered, but one party is to pay to the other the difference between the contract price and the market price of the goods or commodities at the date fixed for executing the contract, then the whole transaction constitutes nothing more than a wager and is null and void under the law.

If at the time of entering into a contract for the sale or purchase of cotton for future delivery it be contemplated by both parties to the contract that at the time fixed for delivery the purchaser shall merely receive or pay the difference between the contract price and the market price, the transaction is a wager and is illegal. If that is the purpose of the contract it makes no difference as to the terms in which the contract may be expressed. If a delivery is not intended as a matter of fact, the contract will not be made legal by a statement at the time the contract is entered into, or that is incorporated in the contract that a delivery was intended. It makes no difference that a bet or wager is made to assume the form of a contract. Gambling is none the less such because it is carried on in the form or guise of legitimate trade.

395 If you find from the testimony that at the time of the making of the contracts upon which plaintiffs' suit is based, it was the intention of Browne and the plaintiffs that there should be no delivery upon the date fixed for such delivery in the contracts, but that there should be at that time merely a receipt or payment of the difference between the contract price and the market price, then you are instructed that the contract was illegal and the plaintiffs cannot recover and you should find for the defendant.

To invalidate the contracts it must appear by a preponderance of the evidence that the intent not to deliver was a mutual intent, that is, it must appear that the intent of both parties at the time the contracts were made was that there should be no delivery. If it was the intent of Browne not to receive

the cotton bought and not to deliver the cotton sold by him, but it was the intent of Thorn and Maginnis that the cotton bought by Browne should be delivered to him and that the cotton sold by Browne should be delivered by him, then the mutual intent not to deliver did not exist and the plaintiffs should recover. If the plaintiffs knew of Browne's intent not to receive or to deliver the cotton bought and sold by him, and if they with such knowledge concurred in such intent and acted accordingly, they cannot recover.

Contracts for future delivery may be legally sold, transferred or cancelled prior to the date stipulated in those contracts for delivery. The sale, transfer or cancellation of such contracts is consistent with the existence of an intention to deliver at the time the contracts were entered into not to deliver. The intention of Browne at the time the contracts were made to sell prior to date of delivery, if he had such intention, was not sufficient to invalidate the contracts
396 unless plaintiffs knew of such intention. You should therefore consider such sale, transfer or cancellation in connection with all of the other evidence in the case in order to determine what was the intention of the parties at the time the contracts were entered into. Reference was made in the testimony to what is termed hedging. Hedging is a means by which collectors, owners and exporters of cotton, or other products and manufactures who make contracts in advance for the sale of their goods, secure themselves against the fluctuations of the market by counter-contracts for the purchase or sale, as the case may be, of an equal quantity of the product or of any material of manufacture. Such contracts are legal and if you find from the testimony that the contracts in this case were hedging contracts, then they were legal and enforceable, or, if you find that the plaintiffs believed that they were hedging contracts they are legal and enforceable. But if you find from the testimony that they were not hedging contracts and that plaintiffs did not believe that they were hedging contracts but believed that they were gaming contracts such as have been defined to you in these instructions, then you are instructed that they are not legal and enforceable.

You are the sole judges of the testimony and the credibility of the witnesses. It is your duty to reconcile the testimony, if you can; that is, to reach a conclusion that will permit the testimony of all the witnesses to stand, if that can be done. Every witness is presumed to speak the truth until the contrary appears. The contrary may appear in a number of

ways: One or more witnesses may testify to a state of facts, and another one or more may testify to a state of facts
397 directly opposite. It is then for you to say which you will believe. One witness may state facts which modify or explain facts testified to by another. This may arise because one has had better means of knowing that about which he testifies than the other. The manner and deportment of one witness while testifying may lead you to believe that his story is true, while the manner and deportment of another witness may convince you that his story is not trustworthy. The interest of one witness in the result of a trial may be so apparent as to lead you to discredit his statement, or the improbability of the story of one witness may lead you to disregard it in favor of the more probable story of another. All these things must be taken into consideration. You are to bring to the consideration of the testimony your impartial and unbiased judgment, and judge the evidence of each witness by the reasonableness or unreasonableness of his story; the means of knowing that about which he testified; his interest, if he has any; his bias or prejudice, if he manifests any; his relationship, if any, to either party, and give all the testimony of each witness the weight it should have in reaching a conclusion as to what is the truth of the case.

The defendant has set up in his answer what is called a counter-claim. There is no foundation for a recovery on the counter-claim unless the contracts entered into, or set out in the complaint, were gaming contracts, and if he was a party to these gaming contracts, he cannot enforce his part of it, or his counter-claim any more than the other parties can enforce theirs. His own testimony tends to show that this amount of money that he claims as a counter-claim was a fund in the hands of plaintiffs for the payment of margins. Therefore, you are instructed that so far as the defendant's coun-
398 ter-claim is concerned, you should find for the plaintiffs. The Clerk has prepared a verdict for that purpose: We the jury find for the plaintiffs upon defendant's counter-claim. Now that is separate and apart from the suit of the plaintiffs for money alleged to have been paid out for defendant's benefit, and for payment of services rendered in his behalf. It is to that about which the testimony with reference to gaming contracts goes.

If you find for the plaintiffs you will use this form of verdict: We the jury find for the plaintiff in the sum of so many dollars. Is there any dispute about the amount?

Mr. Cravens: I don't think so.

The Court: Is there, Mr. McDonough?

Mr. McDonough: The answer denies all of it.

The Court: If the plaintiffs' recover they can recover the amount set out in their complaint, do they not?

Mr. McDonough: I would not be prepared to say that.

The Court: Very well. You will consider that. You will take the complaint with you, and the answer too, as far as that is concerned, and you will allow six per cent interest on the amount that you find so due from the date the amount was due, if you find for the plaintiffs. If you find for the defendant, then you will use this form of verdict: We the jury find for the defendant. And in any event you sign it by one of your number as foreman.

[—] Are there any exceptions?

Mr. Oglesby: The plaintiffs except to the refusal of the court to give instructions numbers 1, 2, 3, 4, 5, 6, 7, 8,
399 9, 10, 11, 12, 13, 14, 15 and 16 separately and severally.

The Court: Have you any exceptions, Mr. McDonough?

Mr. McDonough: I desire to [accept] to that part of the charge referring to the hedging.

The Court: I have refused your request on that proposition.

Mr. McDonough: Yes, sir; and desire also to [accept] to the refusal of the court to give other instructions that are marked refused by Your Honor, and then as to 9, 10, 11 and 12, I am inclined to think those are covered Your Honor by those instructions.

The Court: I want to say that my idea is that I have covered the points in the requests asked both by the plaintiffs and defendant, which are not marked refused. Those that I have marked refused, of course, will show for themselves.

Mr. McDonough: There is one point with reference to 12 that I should except to. 12 is not given. I believe I should except to the refusal of 12, if the court intends to refuse it. That is as I found the United States Cotton Futures Act, it changes the rule formerly existing on suits of this kind. That is on account of the United States Cotton Futures Act.

The Court: You make that apply to the Cotton Futures Act, do you?

Mr. McDonough: Yes.

The Court: All right; I will mark that refused.

Mr. McDonough: Now I would like to ask your Honor about 13. The view that I have of the regulations of the New Orleans Cotton Exchange is that under the rule of the New Orleans Cotton Exchange which is introduced in testimony providing for the form of contract, plaintiffs in the case fail to show any compliance with the contract. I might be specific in the matter. I will say that the plaintiffs have introduced what they call broker's slips. I don't know whether they introduced the sold and bought slips in each case, but some of them were introduced and probably all. Now here is the rule to which I refer. It is under Rule 1, Section 1 and Section 2 that the form of the contract is provided for. There is no testimony that I recall tending to show that that rule was complied with.

400

The Court: What materiality do you contend that that has in this case?

Mr. McDonough: Under the Cotton Futures Act, and under the complaint they sue upon alleged contracts that they say comply with that act. It should have to comply, as I view it, with the rules of the Exchange.

The Court: Well, I think the court of appeals has passed on that question so that I don't think there is anything here but the actual effect of making the payments and performing the service, and the character of the contract, as to whether it was a gaming contract.

Mr. McDonough: Then I save an exception.

Mr. Oglesby: In instruction 8, Your Honor, I think you inadvertently failed to incorporate that in your instructions. I didn't get it if you did.

The Court: Well, how do you contend that that has any bearing now upon the case in view of the instructions that the court has given to the jury, that is, that the contracts were actually made. As a matter of fact, that is shown and the only thing on that point is for the jury to determine whether the money was paid out for defendant Browne, as the plaintiffs allege, and the service was performed.

401

What bearing then do you say it might have on the case as presented to the jury?

Mr. Oglesby: I think your charge fails to incorporate that particular idea that when Browne dealt with Thorn and Maginnis, that he conferred authority upon Thorn and Maginnis, that he was governed by the rules of the Exchange with reference to the trades Thorn & Maginnis made.

The Court: How does that effect the case under the instruction that the court has given? I say what materiality does that question of the manner in which they were entered into, effect the case as the court has presented it to the jury? The only question now is, Did they pay out the money. I have stated to them that the contracts were made.

Mr. Oglesby: Very well.

The Court: Does that appear to be satisfactory?

Mr. Oglesby: It will have to be.

The Court: I wanted to get your idea.

Mr. Oglesby: My idea was this: That when Browne dealt with Thorn and Maginnis, that he is bound by the rules of the New Orleans Cotton Exchange.

The Court: What use can the jury make of it? What is the purpose of instructing on the theory that the court has given to the jury?

Mr. Oglesby: I think it goes to this: When he instructs his agent down there to make a trade, that he is bound by those rules, and if they acted in accordance with those rules, they should be so instructed.

The Court: Well, I will do that. If you find that the
402 defendant Browne sent orders to plaintiffs, Thorn and Maginnis, directing them to enter into contracts of sale or purchase on the New Orleans Cotton Exchange, you are instructed that by so doing Browne conferred authority upon the plaintiffs to make transactions according to the rules and regulations of the New Orleans Cotton Exchange. The question still remains, however, what was the intent of the parties in doing those things, and that is the point that is submitted to you upon the question as to whether or not the contracts entered into were gaming contracts. Does that cover the point?

Mr. Oglesby: We except to the court's modification of it, that is, that part of it.

The Court: All right. Now gentlemen you may retire to consider of your verdict. I will just state that the plaintiffs sue for $23,215.00 and they ask legal interest from February 1st. I think they are entitled to interest only,—if you find they are entitled to recover, only from the time of demand. If you can agree upon the date of demand I will tell the jury that.

Mr. McDonough: I suggest this: Let the jury determine whether they find for the plaintiff—

The Court: I was going to say that if you could agree when demand was made on Mr. Browne out here at Crowder—

Mr. Oglesby: My recollection is it was the 6th or 8th.

The Court: Then that would be the date that the interest would run from.

Mr. McDonough: If they find for the plaintiff.

The Court: If they find for the plaintiff. If they find for the defendant, they need not bother about it.

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403 (Additional Instructions to the Jury.)

And thereafter, after the jury had retired to consider of their verdict, they returned into court and the following took place:

The Court: Gentlemen, is there some information that you would like to get.

Juror Ballman: Your Honor, the jury would like to know if they have the power to render a verdict for any other sum than the one mentioned.

The Court: In reply to that question, gentlemen, I do not believe that the testimony warrants the finding of any different sum. The testimony on the part of the plaintiff is to the effect that the amount sued for was the amount that he paid out for the benefit of the defendant, and includes also what was charged for services as commissions. There is no testimony that would justify a return for any different amount. The question for the jury to decide would be whether that sum was paid out or not, for the benefit of the defendant, including, of course, the commissions.

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404 (Verdict.)

Thereupon, and after all of said testimony was introduced, and after argument of counsel, the jury returned a verdict in favor of the plaintiffs, which said verdict is in words and figures as follows:

(Clerk will here set out the verdict)

Verdict.

"We, the Jury, find in favor of the plaintiffs upon defendant's counterclaim.

EMIL BALLMAN, Foreman."

"We, the Jury, find for the plaintiffs in the sum of $23,215.00 with interest at rate of 6% from Feb. 8th 1917.

EMIL BALLMAN, Foreman."

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(Motion for New Trial and Exception to the ruling of the Court thereon.)

Thereupon, and within the time required by the court, the defendant herein filed a motion for new trial. The said motion for new trial is in words and figures as follows:

Comes the defendant, Fred Browne, and moves the court for a new trial herein upon the following grounds:

1.

The verdict is contrary to the law.

2.

The verdict is contrary to the evidence.

3.

The verdict is not supported by any testimony whatever.

405 4.

The verdict is against the clear weight and preponderance of the testimony.

5.

The court erred in admitting in evidence any testimony in the cause.

6.

The court erred in admitting in testimony telegram from Fred Browne to Thorn & Maginnis, being plaintiff's Exhibit No. 1.

7.

The court erred in admitting in evidence telegram from Thorn & Maginnis to Fred Browne, being plaintiff's Exhibit No. 2.

8.

The court erred in admitting in evidence telegram from Fred Browne to Thorn & Maginnis, being plaintiff's Exhibit No. 3.

9.

The court erred in admitting in evidence telegram from Thorn & Maginnis to Fred Browne, being plaintiff's Exhibit No. 4.

10.

The court erred in admitting in evidence Telegram from Fred Browne to Thorn & Maginnis, being plaintiff's Exhibit No. 5.

11.

The court erred in admitting in evidence telegram from Thorn & Maginnis to Fred Browne, being plaintiff's Exhibit No. 6.

12.

The court erred in admitting in evidence telegram from Fred Browne to Thorn & Maginnis, being plaintiff's Exhibit No. 7.

13.

The court erred in admitting in evidence telegram from Thorn & Maginnis to Fred Browne, being plaintiff's Exhibit No. 8.

14.

The court erred in admitting in evidence telegram from Fred Browne to Thorn & Maginnis, being plaintiff's Exhibit No. 9.

406

15.

The court erred in admitting in evidence telegram from Thorn & Maginnis to Fred Browne, being plaintiff's Exhibit No. 10.

16.

The court erred in admitting in evidence telegram from Fred Browne to Thorn & Maginnis, being plaintiff's Exhibit No. 11.

17.

The court erred in admitting in evidence telegram from Thorn & Maginnis to Fred Browne, being plaintiff's Exhibit No. 12.

18.

The court erred in admitting in evidence telegram from Fred Browne to Thorn & Maginnis, being plaintiff's Exhibit No. 13.

19.

The court erred in admitting in evidence telegram from Thorn & Maginnis to Fred Browne, being plaintiff's Exhibit No. 14.

20.

The court erred in admitting in evidence telegram from Fred Browne to Thorn & Maginnis, being plaintiff's Exhibit No. 15.

21.

The court erred in admitting in evidence telegram from Thorn & Maginnis to Fred Browne, being plaintiff's Exhibit No. 16.

22.

The court erred in admitting in evidence broker's contract slip from C. P. Ellis & Co. to Thorn & Maginnis, being plaintiff's Exhibit 16a.

23.

The court erred in admitting in evidence broker's contract slip, Hayward, Howard & Co. to Thorn & Maginnis, being plaintiff's Exhibit 17.

24.

The court erred in admitting in evidence broker's con-
407 tract slip, Silvan, Newburger & Co. to Thorn & Maginnis, to Thorn & Maginnis, being plaintiff's Exhibit 18.

25.

The court erred in admitting in evidence broker's contract slip, Harrison & Lawrence to Thorn & Maginnis, being plaintiff's Exhibit 19.

26.

The court erred in admitting in evidence broker's contract slip, Pinckard & Kennedy to Thorn & Maginnis, being plaintiff's Exhibit 20.

27.

The court erred in admitting in evidence broker's contract slip, H. D. Cothran & Co. to Thorn & Maginnis, being plaintiff's Exhibit 21.

28.

The court erred in admitting in evidence broker's contract slip, H. and B. Beer to Thorn & Maginnis, being plaintiff's Exhibit 22.

29.

The court erred in admitting in evidence broker's contract slip, Pinckard & Kennedy to Thorn & Maginnis, being plaintiff's Exhibit 23.

30.

The court erred in admitting in evidence broker's contract slip, John F. Clark & Co. to Thorn & Maginnis, being plaintiff's Exhibit 24.

31.

The court erred in admitting in evidence broker' contract slip, Felix Couturie & Co., to Thorn & Maginnis, being plaintiff's Exhibit 25.

32.

The court erred in admitting in evidence broker's con-
408 tract [tract] slip, Shepard & Gluck to Thorn & Maginnis, being plaintiff's Exhibit 26.

33.

The court erred in admitting in evidence broker's contract slip, Airey & Stouse to Thorn & Maginnis, being plaintiff's Exhibit 27.

34.

The court erred in admitting in evidence statement of purchase and sale by Thorn & Maginnis for account of Fred Browne, being plaintiff's Exhibit No. 28.

35.

The court erred in admitting in evidence telegram from Thorn & Maginnis to Fred Browne, being plaintiff's Exhibit No. 29.

36.

The court erred in admitting in evidence telegram from Thorn & Maginnis to Fred Browne, being plaintiff's Exhibit No. 30.

37.

The court erred in admitting in evidence telegram from Fred Browne to Thorn & Maginnis, being plaintiff's Exhibit No. 31.

38.

The court erred in admitting in evidence telegram from Thorn & Maginnis to Fred Browne, being plaintiff's Exhibit No. 32.

39.

The court erred in admitting in evidence telegram from Thorn & Maginnis to Fred Browne, being plaintiff's Exhibit No. 33.

40.

The court erred in admitting in evidence telegram from Thorn & Maginnis to Fred Browne, being plaintiff's Exhibit No. 34.

41.

The court erred in admitting in evidence telegram from Fred Browne to Thorn & Maginnis, being plaintiff's Exhibit No. 35.

42.

409 The court erred in admitting in evidence telegram from Thorn & Maginnis to Fred Browne, being plaintiff's Exhibit No. 36.

43.

The court erred in admitting in evidence telegram from Thorn & Maginnis to Fred Browne, being plaintiff's Exhibit No. 37.

44.

The court erred in admitting in evidence statement of account of Fred Browne with Thorn & Maginnis, being plaintiff's Exhibit No. 38.

45.

The court erred in admitting in evidence form of confirmation slip used by Thorn & Maginnis, being plaintiff's Exhibit No. 39.

46.

The court erred in admitting in evidence confirmation slip from Thorn & Maginnis to Fred Browne, being plaintiff's Exhibit No. 40.

47.

The court erred in admitting in evidence confirmation slip from Thorn & Maginnis to Fred Browne, being plaintiff's Exhibit No. 41.

48.

The court erred in admitting in evidence confirmation slip from Thorn & Maginnis to Fred Browne, being plaintiff's Exhibit No. 42.

49.

The court erred in admitting in evidence confirmation slip from Thorn & Maginnis to Fred Browne, being plaintiff's Exhibit No. 43.

50.

The court erred in admitting in evidence confirmation slip from Thorn & Maginnis to Fred Browne, being plaintiff's Exhibit No. 44.

410 51.

The court erred in admitting in evidence confirmation slip from Thorn & Maginnis to Fred Browne, being plaintiff's Exhibit No. 45.

52.

The court erred in admitting in evidence telegram from Thorn & Maginnis, dated February 1, 1917.

53.

The court erred in admitting in evidence telegram from Thorn & Maginnis to Fred Browne dated February 1, 1917.

54.

The court erred in admitting in evidence telegram from Thorn & Maginnis to Fred Browne, dated February 5, 1917.

55.

The court erred in admitting in testimony the broker's slips, showing the sale to Thorn & Maginnis by other brokers of 2000 bales of cotton.

56.

The court erred in admitting in evidence the broker's slips showing the sale by Thorn & Maginnis on February 1, 1917.

57.

The court erred in admitting in evidence any and all broker's slips whether signed by Thorn & Maginnis or other brokers. The name of Fred Browne not appearing on any of said broker's slips.

58.

The court erred in admitting in evidence any and all of the broker's bought notes or the broker's sold notes, the name of Fred Browne not appearing upon any of the bought notes or sold notes, said bought notes and sold notes not being in compliance with the cotton futures act of the United States.

59.

411 The court erred in admitting in evidence the testimony of the witnesses, C. B. Thorn, to the effect that under the authority of the telegram sent to Thorn & Maginnis by Fred Browne, on the morning of February, 1917, authorizing the sale of 2000 bales of cotton at 17.20 and 17.15 that Thorn & Maginnis had the right under the authority of that telegram to sell said cotton at 14 cents.

60.

The court erred in permitting C. B. Thorn and other witnesses to testify that there was a custom on the New Orleans Cotton Exchange, authorizing Thorn & Maginnis to sell for the account of the plaintiff 2000 bales of cotton at the market provided the market was lower than the price named in the telegram authorizing the sale.

61.

The court erred in admitting in evidence any and all contracts or alleged broker's slips because said contracts did not comply with the rules and regulations of the New Orleans Cotton Exchange, and because said alleged contracts, memoranda and alleged agreements did not comply with the United States Cotton Futures Act, and were not signed by the party to be charged as required by the United States Cotton Futures Act.

62.

The court erred in admitting in evidence the testimony of L. P. Barkdull, to the effect that said Barkdull was familiar

with the rules and regulations of the New Orleans Cotton Exchange, and in permitting said Barkdull to testify as to what were the rules and regulations of the New Orleans Cotton Exchange.

63.

The court erred in permitting said L. P. Barkdull to testify that it was the duty of Thorn & Maginnis to sell 2000 bales of cotton at fourteen cents on the authority of the telegram from Browne to Thorn & Maginnis, dated February 1, 1917.

412

64.

The court erred in permitting the witness, C. B. Thorn to testify that the telegrams passing between plaintiffs and the defendant were in the customary form of telegrams received from customers.

65.

The court erred in permitting in evidence any testimony tending to show what was the custom on the New Orleans Exchange concerning the execution of stock loss orders, there being no proof that Fred Browne had any knowledge of said custom.

66.

The court erred in permitting the witness, C. B. Thorn, to testify from whom he bought the 2000 bales of cotton which he claimed he bought for the account of Fred Browne.

67.

The court erred in permitting said C. B. Thorn to testify to whom he sold 2000 bales of cotton which he claimed were sold for the account of Fred Browne.

68.

The court erred separately and severally in admitting in evidence Exhibits A to L and each of them, these exhibits being the purchase slips and there being nothing in the writing connecting the name of Fred Browne with any of said transactions.

69.

The court erred in refusing to permit C. B. Thorn to testify on cross examination that when a man sells what he does not have he sells it with the expectation that the market will go down, and he will take his profit by the fall in the price.

70.

The court erred in refusing to permit the defendant to prove by C. B. Thorn the value of a seat on the New Orleans Exchange.

413

71.

The court erred in permitting the plaintiffs to prove by C. B. Thorn and erred in permitting C. B. Thorn to testify that he did not know that Fred Browne was gambling in futures.

72.

The court erred in permitting the plaintiffs to prove by C. B. Thorn that it was his intention and that he would have made delivery of the 2000 bales of cotton for May delivery 1917, if Browne had carried the contracts to that date.

73.

The court erred in refusing to permit the defendant to prove by J. L. Burba that said Burba dealt with Thorn & Maginnis in the purchase and sale of future contracts and that said Burba had no intention to deliver the cotton or to accept it under said alleged contracts and that said Burba bought said future contracts for the purpose of speculating on the rise and fall of cotton.

74.

The court erred in refusing to permit the defendant to prove by the witness Burba that Thorn & Maginnis had a travelling representative in Oklahoma soliciting dealings in cotton future business.

75.

The court erred in refusing to permit the defendant, Fred Browne, to testify that there was nothing in any of the correspondence, letters, telegrams or negotiations between the plaintiffs and the defendant to indicate that Thorn & Maginnis expected to deliver the cotton or to receive any cotton.

76.

The court erred in not permitting the defendant, Browne to testify and give in evidence the information which said Browne received from the traveling representative of Thorn & Maginnis.

414

77.

The court erred in striking from defendant Browne's evidence the statement to the effect that Thorn & Maginnis

knew better than Browne did that no cotton was to be delivered or received on said contracts.

78.

The court erred in refusing the following request for instructions to the jury which request the defendant asked the court to give as a part of his charge to the jury:

1.

"The court instructs the jury to find the issues for the defendant.

2.

"Under the act of Congress, known as the Cotton Futures Act, and under the Treasury Regulations made thereunder, the evidence in this cause is insufficient to show that the dealing in cotton for future delivery referred to in the evidence in this cause and the contracts made for the purchase and sale of said cotton complied with the Cotton Futures Act.

3.

"Under the Cotton Futures Act of Congress, no legal contract for the future delivery of cotton can be made except by putting said contract in writing. The contracts offered in testimony state on their face that they are made in compliance with the Cotton Futures Act of Congress and the regulations of the New Orleans Cotton Exchange. The rules of the New Orleans Cotton Exchange permit oral contracts. The Act of Congress does not permit oral contracts of that kind. Hence under the Act of Congress the contracts offered in evidence are invalid and cannot be the basis of a recovery in this action.

4.

"It was the intention of Congress in passing the Cotton Futures Act of Congress to strike down and make illegal and void every contract for the future delivery of cotton, unless said contract was made in accordance with the terms of said Cotton Futures Act. Therefore, if the Internal Revenue of two cents per pound as provided by the Act of Congress, was not paid by the parties to the contract offered in testimony, and if the parties did not enter into the contract as provided by said Act of Congress, then the entire transaction is illegal and void, and there can be no recovery in favor of the plaintiff. The Cotton Futures Act of Congress as to the tax provides as follows:

'That upon each contract of sale of any cotton for future delivery made at on or in any exchange board of trade or similar institution or place of business there is hereby levied a tax in the nature of an excise of two cents for each pound of cotton involved in any such contract.'

415 5.

"Section 4 of said Cotton Futures Act is as follows:

(Contracts of Sale Form and Contents). That each contract of sale of cotton for future delivery mentioned in Section three of this act shall be in writing plainly stating or evidenced by written memorandum showing, the terms of such contract, including the quantity of the cotton involved and the names and addresses of the seller and buyer in such contract, and shall be signed by the party to be charged, or by his agent in his behalf. If the contract or memorandum specify in bales the quantity of the cotton involved, without giving the weight, each bale shall, for the purpose of this act, be deemed to weigh five hundred pounds.

6.

"Under Section 5 of said Cotton Futures Act, it is provided that no tax shall be levied under the act on any contract of sale mentioned in Section 3, quoted above, if the contracts comply with each of the conditions named in section 5. One of these conditions is that said contract must conform to the requirements of Section 4 and the Rules and Regulations made pursuant to that Act. After the passage of said Act, certain regulations were made by the Treasury Department of the United States. Acting under the authority of said act of Congress, the Treasury Department of the United States adopted the following regulation:

'No provision, by-law, rule, or custom of any exchange, board of trade, or similar institution or place of business which is inconsistent or in conflict with any requirement or provision of the Act to provide revenue to defray war expenses and for other purposes, approved October 3, 1917, or any regulations thereunder, nor any collateral, or additional agreement or understanding, either verbal or written, respecting the subject matter of such contract or the settlement or fulfillment thereof, which is inconsistent or in conflict with any requirement of said act or the regulations thereunder promulgated by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall exempt any person from the payment of the tax provided for under Section 807, subdivision 5, of said act.'

The jury are therefore instructed that if there is any provision by law, rule or custom of the New Orleans Cotton Exchange which is inconsistent with or in conflict with any requirement or provision of the act of the Cotton Futures Act or if there is any additional agreement, understanding, either verbal, or written respecting the subject matter of said contracts or the settlement or fulfillment thereof, which is in conflict with any requirement of said act, then and in that event the contracts offered in evidence would be illegal and void and there can be no recovery. In that regard, if the provisions of the New Orleans Cotton Exchange regulations and rules provide for verbal contracts or if they provide for settlements so as to prohibit the actual delivery of the cotton to the defendant if actual delivery was intended then said regulations would be in conflict with the Act of Congress and the rules of the Treasury Department and in that event said contracts would be invalid and no recovery could be had upon them.

7.

"If, under the rules and regulations of the New Orleans Cotton Exchange the plaintiffs or the buyer or seller of cot-
416 ton to or from the defendant had the right to prevent the defendant from actually receiving the cotton contracted for or if under said regulations there was any impairment of the defendant's right to receive said cotton, then the contracts offered in testimony did not comply with the Cotton Futures Act and the Treasury Regulations thereunder, and if that be the fact then the plaintiffs cannot recover.

8.

"If the defendant on the morning of February 1, 1917, sent to the plaintiffs a telegram, authorizing them to stop his losses on 1000 bales at 17.20 cents per pound and on 1000 bales at 17.15 cents per pound, and if there was a custom upon the New Orleans Cotton Exchange, authorizing the plaintiffs upon receipt of that telegram to sell defendant's cotton at 14 cents per pound, and if that custom was unknown to the defendant, then such telegram would not authorize the plaintiffs to sell out defendant's contracts for the future delivery of cotton, if they were valid and at the price of 14 cents per pound. If such are the facts, the sale made by the plaintiffs of 2000 bales of cotton at 14 cents was unauthorized by the defendant and in that event the plaintiff cannot recover.

9.

"If the contract was in the form required by the Cotton Futures Act, and if the contracts introduced in evidence were

fair and presumptively lawful on their face, yet if there was no intention to deliver the cotton bought and sold or to receive the cotton bought and sold then the contract was illegal and there can be no recovery. A contract for the future delivery of cotton, although fair on its face is void, if the parties to the contract did not intend that there should be actual delivery. In other words, if the parties intended at the time of the making of the contract that said contract should be discharged by the payment of one party to the other of the difference between the contract price of the goods at the date fixed for their delivery or the termination of that contract or the market price of that contract, then said contract is what is known as a wager contract and in that event plaintiffs cannot recover. If the parties intended at the time of the making of these contracts that there should be no actual delivery of cotton and that settlements should be made upon the difference between the contract price and the market price at the time that the contract should be closed then said contracts are wagering contracts, and are against public policy and void, and no recovery can be had on any such contracts. If the parties intended to speculate without intending any delivery on the rise and fall in the price of cotton then said contracts were void, and in that event there could be no recovery.

10.

"If either party to the contract, that is if the defendant or the plaintiffs, or if the defendant's vendee or vendor, did not [intent] under these contracts to deliver any cotton or to receive any cotton and if it was intended only to settle as above stated upon the rise and fall in price of cotton then the contracts were wagering contracts, and there can be no recovery in that event.

417 11.

"If the jury find that the contracts are wagering contracts and void as above set forth, then the defendant in that event would be entitled to recover against the plaintiffs in this action the amount of actual money paid by the defendant to the plaintiffs and if the jury find that said contracts are wagering contracts, and if the defendant in furtherance of said contracts paid money over to the plaintiffs then the defendant would be entitled to a verdict in his favor for the amount of money so paid by him and in the hands of the plaintiff at the time of the termination of the transaction.

12.

"In determining the question as to whether the contracts introduced in evidence are illegal and void as being wagering contracts the jury are entitled to take in consideration all the facts and circumstances in the case, including the usages and customs of cotton brokers on exchanges and including the amount of cotton sold on the exchanges and the amount bought thereon and also the business of the defendant and his ability and capacity to take and pay for the amount of cotton purchased. The question on that subject to be determined by the jury is as to whether it was intended by the plaintiffs and the defendant that there should be an actual delivery and receipt of the cotton. If no actual delivery was intended then the plaintiffs cannot recover. This, if true, defeats the plaintiff's recovery, although the contracts for the purchase and sale of the cotton may be in writing and may be in the usual form and in accordance with law. If it be true that the parties did not intend the actual delivery of the cotton they cannot make their transactions valid by placing the same in the form of contracts which are fairly legal on their face. The jury have the right to consider all evidence introduced, including that outside of and beyond the contracts. They are not bound to find that an actual delivery was intended even if the contract so recites. If the evidence shows that no actual delivery was intended then the contracts are void, although delivery may be provided for in the contracts and if they are void, then there can be no recovery.

13.

"If the plaintiffs were brokers upon the New Orleans Cotton Exchange, and if they purchased for the account of the defendant from other brokers on said Cotton Exchange 2000 bales of cotton prior to February 1, 1917, and if on February 1, 1917, the plaintiffs as brokers sold to other brokers for the account of the defendant 2000 bales of cotton, and if these trades were in the form required by the rules of the New Orleans Cotton Exchange and the United States Cotton Futures Act, and if the parties to these transactions under the guise of such a contract did not intend to deliver or receive cotton under said contracts and if the real intent was merely to speculate in the rise or fall of prices and the cotton was not intended to be delivered but one party was to pay to the other the difference between the contract price and the market price of the cotton at the date fixed for executing the contract or at such other date as the parties interest might elect, then the whole contract constituted nothing more than a wager and is null and void and in that event the plaintiff cannot recover.

14.

"If the parties, the plaintiffs and the defendant, or the latter's vendors or vendees, at the time of entering in-
418 to the transactions, did not intend to deliver any cotton on the contracts, and if it was their intention not to deliver any cotton but to take profits or losses by the rise or fall in the price of cotton, then said contracts are void and if such are the facts then even if defendant agreed to pay the balance, such an agreement in that event would not be binding, and under those facts, the plaintiffs cannot recover on any agreement by defendant to pay, if he made such agreement.

15.

"Some reference has been made in the evidence to the question of hedging, it being contended that hedging was legal. On that question the court instructs the jury that if a holder of spot cotton in order to recoup his loss by a fall in the price of that cotton, sells futures without any intention on his part to deliver the cotton on the futures contract, and if the futures contract is made without any intention to accept or deliver cotton thereon, but to take or make profit by the fall of the price in futures, then under those circumstances the said futures contract would be unlawful and void; and there could be no recovery in a case of that kind where the right of recovery is based upon the fall in the price of the futures."

79.

The court erred in refusing to give each and every one of said instructions.

80.

The court erred in refusing to direct a verdict in favor of the defendant.

81.

The court erred in not permitting the defendant to have the opening and closing of the argument before the jury.

82.

The court erred in directing a verdict in favor of the plaintiffs on the counter claim of the defendant.

83.

The court erred in instructing the jury, when they came into court, after they had been considering their verdict, for awhile, to the effect that the jury could not find for the plain-

tiffs if they found for the plaintiffs in any sum less than the full amount.

84.

The court erred in giving to the jury the following
419 charge: (Clerk will here set out the charge in full)

(Note by Clerk of Trial Court: The charge of the court to the Jury is heretofore set out in the bill of exceptions and is therefore not recopied here.)

85.

The court erred in instructing the jury that hedging contracts were legal.

86.

The court erred in giving any instruction or charge to the jury on the subject of hedging contracts.

Premises considered, the defendant prays that the verdict herein be set aside and a new trial be granted.

JAMES B. McDONOUGH
Attorney for Defendant.

The court overruled said motion for new trial, and the defendant at the time excepted and prayed the court for time in which to file a bill of exceptions. Said motion for new trial came on for hearing on Friday, February 6. 1920, and was by the court overruled, and defendant excepted, as above stated.

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Thereupon, the defendant asked the court to allow ninety days' time in which to prepare and sign and seal and file a bill of exceptions herein, and the court granted to the defendant said time.

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(Prayer for Allowance of Bill of Exceptions.)

Now comes the defendant, within the time allowed by the court and by the law, and herewith presents this its bill of exceptions, and asks that the same may be signed, sealed and made a part of the record herein, which is accordingly done, and the said defendant prays an appeal to the Circuit Court of Appeals of the Eighth Circuit, which appeal is
420 granted. Defendant at the time of the filing said bill of exceptions, also filed herein a petition for writ of

error and assignment of errors, and asks that the same may be made a part of the record ,which is accordingly done.

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Atorney for Defendant.

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Certificate of Judge to Bill of Exceptions.

Now, therefore, the undersigned, District Judge of the United States, Western District of Arkansas, Fort Smith Division, being the judge who tried said cause, does hereby certify that the above and foregoing is a true and perfect bill of exceptions in this cause, showing all of the exceptions and the rulings of the court, and said bill of exceptions is, therefore, here and now hereby allowed as a true and perfect presentation of all the rulings of the court, and the exceptions of the defendant thereto.

FRANK A. YOUMANS
Judge of the United States District Court, for the Western District of Arkansas, Fort Smith Division.

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421 (Clerk's Certificate to Transcript.)

I, Wm. S. Wellshear, Clerk of the District Court of the United States for the Western District of Arkansas, hereby certify that the foregoing transcript which is herewith transmitted in obedience to the command of the Writ of Error annexed, is a true and correct copy of the record, Bill of Exceptions, Assignment of Errors, and all proceedings in the case of Charles B. Thorn, William T. Maginnis, Samuel C. Coleman and Miles J. Kehoe, partners doing business as Thorn & Maginnis, vs. Fred Browne, No. 695 Law, as the same appear from the files and records of my said office in the Fort Smith Division of said District.

Citation with waiver of service is annexed and transmitted herewith.

Seal
U. S. Dist. Court
West. Dist. of Ark.

In Testimony Whereof, I hereunto set my hand and affix the seal of said court at office in the City of Fort Smith, Arkansas, this April 23, 1920.

WM. S. WELLSHEAR,
Clerk.

Filed Apr 26 1920 E. E. Koch Clerk

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675 And thereafter the following proceedings were had in said cause in the Circuit Court of Appeals, viz:

(Appearance of Counsel for Plaintiff in Error.)

United States Circuit Court of Appeals, Eighth Circuit.

Fred Browne, Plaintiff in Error,
No. 5602. vs.
Charles B. Thorn, et al.

The Clerk will enter my appearance as Counsel for the Plaintiff in Error.

JAMES B. McDONOUGH.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Apr. 28, 1920.

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(Appearance of Mr. Ira D. Oglesby and Mr. Ben Cravens as Counsel for Defendants in Error.)

The Clerk will enter my appearance as Counsel for the Defendants in Error.

IRA D. OGLESBY,
BEN CRAVENS.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Sep. 28, 1920.

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676 (Appearance of Mr. Joseph E. Johnson as Counsel for the Defendants in Error.)

The Clerk will enter my appearance as Counsel for the Defendants in Error.

JOS. E. JOHNSON,
Waynesville, N. C.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Oct. 5, 1920.

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(Order of Submission.)

December Term, 1920.

Wednesday, December 15, 1920.

This cause having been called for hearing in its regular order and counsel not appearing for either party to make oral argument, this cause is thereupon taken by the Court as submitted on the transcript of the record from said District Court and the briefs of counsel filed herein; to be submitted to a third Judge if deemed advisable by the Court.

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(Order Submitting Case to Third Judge.)

December Term, 1920.

Monday, March 21, 1921.

This cause having heretofore been submitted to the Court composed of Judges Hook and Johnson and it having been deemed advisable that the same be submitted to a third Judge, this cause is now submitted without oral argument to Honorable Walter H. Sanborn as a third Judge on the transcript of record from said District Court and the briefs of counsel filed herein.

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677 (Opinion.)

United States Circuit Court of Appeals Eighth Circuit.

No. 5602—December Term, A. D. 1920.

In Error to the District Court of the United States for the Western District of Arkansas.

Fred Browne, Plaintiff in Error,

vs.

Charles B. Thorn, et al., Defendants in Error.

Mr. James B. McDonough submitted brief for plaintiff in error.

Mr. Joseph E. Johnson, Mr. L. C. Going, Mr. Ben Cravens, and Mr. Ira D. Oglesby submitted brief for defendants in error.

Before Sanborn and Hook, Circuit Judges, and Johnson, District Judge.

Johnson, District Judge, delivered the opinion of the Court.

This litigation arose out of dealings on the New Orleans cotton exchange. Plaintiffs were brokers and members of the Exchange. They allege in their complaint that between January 24th and February 1st, 1917, they bought and sold for defendant, at his request, on said Exchange 2,000 bales of cotton for delivery in the month of May following; that in these transactions they advanced and paid out for him a large sum of money, for which sum they have demanded judgment.

Upon the trial, verdict and judgment were in favor of plaintiff, and defendant has brought the case to this court for review and prays a reversal of the judgment on account of errors alleged to have occurred at the trial.

678 This is the second time the case has been in this court.

At the first trial in the court below a verdict was directed for the defendant and a judgment entered dismissing the action. The judgment of the trial court was reversed by this court and a new trial granted. Thorn vs. Browne, 257 Fed. 519.

At the second trial plaintiffs had judgment and the defendant is now the plaintiff in error.

The great majority of the 143 specifications contained in the assignment of errors of the defendant relate to questions considered and disposed of in the former decision of the case. It is settled law in this jurisdiction that:

"A legal proposition once considered and decided in a given cause by an appellate court may not be again questioned in that court on a subsequent writ or appeal to review a subsequent trial of the same case on the same issues and evidence. Such propositions are res adjudicata between the parties to that suit and their privies and constitute the law of the case." Town of Fletcher vs. Hickman, 208 Fed. 118.

Upon the second trial the lower court could not do otherwise than follow the decision of this court and apply the rules of law announced therein, and that decision is equally binding upon this court at this time.

As stated in Balch vs. Haas, 73 Fed. 974:

"A judgment rendered by an appellate court in a given case is conclusive on the parties thereto, and an appellate court like a nisi prius court, is powerless to review or revise its own judgments after the lapse of the term at which they were rendered, except in cases of fraud. Another form of stating the doctrine is that propositions of law which were considered and decided on a first appeal become the law of that particular case, and, whether right or wrong, must be adhered to on a second appeal."

The defendant has assigned as error the refusal of the court below to direct a verdict in his favor. The ground upon which it is claimed this instruction should have been given remaining open for our consideration, is that the transactions alleged in the
679 complaint were gambling ventures; that is to say, the pretended purchases and sales of cotton were mere wagers on the fluctuation of the market, to be settled according to the differences between the contract and the market prices.

The plaintiffs resided at New Orleans, the defendant at Fort Smith in the State of Arkansas. The business was conducted by telegrams and letters between the parties. Plaintiffs had no interest in the purchases and sales they were directed to make, other than as defendant's brokers. Notwithstanding the vehemence of counsel for the defendant, we do not think the correspondence of the parties indicates that the transactions were not intended to be legitimate. The contracts were fair on their face and presumptively lawful, and the defendant having asserted that they were wagers upon the fluctuations of the market and mere gambling transactions, the burden was on him to prove it. Clews vs. Jamieson, 182 U. S. 491.

In discussing this same defense this court, in Wilhite vs. Houston, 200 Fed. 390, says:

"The character of such exchanges, their legitimate relation to the business world, and their operations are described in Board of Trade vs. Christie Grain & Stock Co., 198 U. S. 236, 25 Sup. Ct. 637, 49 L. Ed. 1031, where some of the aspects of the case at bar which counsel deem sinister find adequate explanation. The plaintiffs had no interest in the sales and purchases they were directed to make, other than as defendant's brokers; and this relation, as between them, was not affected by the fact that in executing defendant's orders the plaintiffs assumed the position of principals toward those they dealt with. Clews vs. Jamieson, 182 U. S. 461, 481, 21 Sup. Ct. 845, 45 L. Ed. 1183. An order from a customer to a broker, to be executed upon a board of trade, contemplates conformity to the rules and customs which prevail there. Bibb vs. Allen, 149 U. S. 481, 13 Sup. Ct. 950, 37 L. Ed. 819. The rules of the boards of trade at Kansas City and Chicago prohibited gambling transactions.

As regards their legality the sales and purchases of grain in the Chicago market were governed by the law of Illinois; those in the Kansas City market, by the law of Missouri. Berry vs. Chase, 77 C. C. A. 161, 146 Fed. 625; Edwards Brokerage Co. vs. Stevenson, 160 Mo. 516, 61 S. W. 617. In Illinois a contract of sale
680 or purchase of a commodity for future delivery is void if both parties intend it as a wager upon the market movements to be settled by differences, but not if only one of them has that intention. That is the general rule in the absence of statute. In Missouri the contract is declared void by statute, if either party so intends, though the other does not. Cleage vs. Laidley, 79 C. C. A. 284, 149 Fed. 346. Nothing appeared in the correspondence of the parties or their conferences before the controversy arose to indicate

at the transactions were not intended to be legitimate. The mere ct that no grain was actually delivered or received, but that the les and purchases were set off against others according to the stom of exchanges, did not show they were illegal, Cleage vs. aidley, supra.

The contracts were therefore fair on their face and presumptively wful, whatever may have been the undisclosed intention of de- ndant. In this situation the law is that, when defendant asserted ey were wagers upon the fluctuations of the market, the burden as on him to prove it. Clews vs. Jamieson, supra, 182 U. S. 491, 1 Sup. Ct. 845, 45 L. Ed. 1183."

In Louisiana as in Illinois, a contract of purchase or sale of a mmodity for future delivery is void if both parties intended it a wager upon the market movements, to be settled by differences, t not if only one of them has that intention. Conner vs. Robert- n (37 L. A. Ann., 814) 55 Am. Rep. 521.

The question of the illegality of the transaction as gambling ntures was submitted to the jury for their determination by the ial court in its charge, in which the legal principles enunciated Wilhite vs. Houston were fully and clearly stated. In thus sub- itting this question to the jury the defendant has no cause to mplain.

The defendant has assigned as error the refusal of the court to rmit a witness called by him to testify that the witness had dealt ith plaintiffs in the purchase and sale of cotton on the New rleans Exchange for future delivery, and that he had no intention the time to deliver or accept cotton under his contracts.

In Roundtree vs. Smith, 108 U. S. at page 276, the court said:

"Evidence was given that a very large proportion of all the contracts made for the sale of produce at the board of trade 81 of Chicago were settled by payment of differences, and that nothing else was expected by the parties to them, and the mber of these in proportion to the number of bona fide contracts, which delivery was expected and desired, is said to be so large to justify the inference that it was so in these cases.

But since the plaintiff testifies that he had no such understanding, nce nothing is proved of the intention of the other parties, and

since the contracts were always in writing, we do not think the evidence of what other people intended by other contracts of a similar character, however numerous, is sufficient of itself to prove that the parties to these contracts intended to violate the law, or to justify a jury in making such a presumption."

The trial court did not err in excluding the testimony of this witness.

At the time of closing his account, the defendant had to his credit on the books of the plaintiffs a balance of $6760. Upon closing the account, the plaintiffs applied this balance in part payment of the amount expended by them in settlement of the transactions alleged in the complaint. The defendant, by counter-claim, has sought to recover this balance of $6760. The Trial court directed a verdict for plaintiff on the counter-claim, and the defendant has assigned this action of the court as error. This assignment is without merit. The sum above mentioned was the balance of a running account which the defendant had carried with plaintiffs since about the 1st of October, 1916. In the account the credits consisted of moneys advanced by defendant and of profits realized from purchases and sales of cotton upon the exchange; the debits consisted, of moneys withdrawn from the account by defendant, of commissions of plaintiffs as brokers in the purchases and sales by defendant upon the exchange, and of losses sustained in the business—the balance being the sum above stated at the time the account was finally closed and prior to its application in part payment of the amount expended by plaintiffs in the transactions alleged in the complaint. The defendant in his counter-claim alleged, and at the trial continued to assert, that all of the transactions evidenced by the account from its inception to its end were gambling ventures. In Higgins v. McCrea, 116 U. S. at page 684, the court, in discussing a similar case says:

682 "His case, as stated by himself in his answer and counter-claim, was that the money was advanced by him to carry on a gambling transaction, that with his concurrence the money so advanced was used in such gambling transactions, and that by the statutes of Illinois, where the contracts were made, they were treated as gaming contracts and declared illegal and void, and the making of them a criminal offense. The counter-claim thus stated was supported by the testimony of the defendant himself, given upon the trial. There was no statute of Illinois to authorize the recovery

of money paid on such contracts. The cross-action, therefore, of the defendant, stated in his pleading and supported by his own deposition, was not one on which any recovery could be had."

The specification- of error not already considered relate to questions decided in our former decision, or are specifications so clearly without merit as not to call for discussion.

We find no error in the record and the judgment will be affirmed.

It is so ordered.

Filed April 15, 1921.

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683 (Judgment.)

United States Circuit Court of Appeals, Eighth Circuit.
December Term, 1920.
Friday, April 15, 1921.

Fred Browne,
Plaintiff in Error.

No. 5602. vs.

Charles B. Thorn, William T. Maginnis, Samuel C. Coleman, and Miles J. Kehoe, partners doing business as Thorn and Maginnis.

In error to the District Court of the United States for the Western District of Arkansas.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Arkansas, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed with costs; and that Charles B. Thorn, William T. Maginnis, Samuel C. Coleman and Miles J. Kehoe, partners doing business as Thorn and Maginnis have and recover against Fred Browne the sum of twenty dollars for their costs herein and have execution therefor.

April 15, 1921.

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684 (Petition for Writ of Error from Supreme Court, U. S., and allowance thereof.)

In the Supreme Court of the United States

Fred Browne

Plaintiff in Error.

vs.

Charles B. Thorn, William T. Maginnis, Samuel C. Coleman and Miles J. Kehoe, partners doing business as Thorn & Maginnis.

Defendants in Error.

Comes now Fred Browne, who was plaintiff in error in cause No. 5602 recently pending in the Circuit Court of Appeals of the Eighth Circuit, and wherein Fred Browne was Plaintiff in Error in that court, and the defendants in error herein were defendants in error in that court, and hereby petitions for a writ of error, from the Supreme Court of the United States to the Circuit Court of Appeals of the Eighth Circuit, and the said Fred Browne deems himself aggrieved by the errors occurring at the trial of said cause, in the United States District Court for the Western District of Arkansas, Fort Smith Division, and also deems himself aggrieved by the various errors occurring in the hearing, proceedings, orders and judgment of the said United States Circuit Court of Appeals for the Eighth Circuit, the said errors in the latter court being the same as in the District Court, which errors are more fully set out in the Assignment of Errors filed herewith, and made a part of this Petition in Error.

Wherefore Plaintiff in Error prays that a writ of error may be issued in his behalf out of the Supreme Court of the United States for the correction of the errors complained of in the said Dis-
685 trict Court above referred to and in the Circuit Court of Appeals above referred to, and that the judgment and decree of the District Court and the Circuit Court of Appeals be reversed and set aside, and that a Transcript of the record proceedings and papers in this cause, duly authenticated as required by law, may be sent to the Supreme Court of the United States, and that upon a hearing in that court, the cause be reversed and the orders, rulings and judgments of the said Circuit Court of Appeals

be reversed and that this plaintiff in Error have such other and further relief as may be proper in the premises.

Fred Browne,
By James B. McDonough,
His Attorney.

Writ of Error allowed as prayed on this 20th day of May, 1921.

Walter H. Sanborn,
Senior United States Circuit Judge, Eighth Circuit.

Received copy of the above this 16th day of May, 1921.

Ben Cravens,
Ira D. Oglesby,
Counsel for defendants in error.

(Endorsed): Filed in U. S. Circuit Court of Appeals, May 20, 1921.

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686 (Assignment of Errors on Write of Error from Supreme Court, U. S.)

Comes now Fred Browne, Plaintiff in Error, and files herein the following assignment of Errors appearing upon the record in this cause, in the Circuit Court of Appeals of the Eighth Circuit, which errors, the Plaintiff in Error averts to have occurred in the proceedings, orders, decisions and judgment of the United States Circuit Court of Appeals of the Eighth Circuit in the hearing of said cause on writ of error thereto, and for which the judgment of said Circuit Court of Appeals should be reversed.

1.

The said Circuit Court of Appeals erred in affirming the judgment of the United States District Court, Western District of Arkansas, Fort Smith Division, and in not reversing said judgment.

2.

The said Circuit Court of Appeals erred in holding that no error was committed by the said District Court in admitting any evidence in said cause, the objection to said evidence being on the ground that the cotton futures act of Congress was not complied with, and that the undisputed evidence showed that the defendants in error had violated said Cotton Futures Act of Congress.

3.

The said Circuit Court of Appeals also erred in refusing to hold that the undisputed evidence in said cause showed that the transactions on the New Orleans Cotton Exchange were plainly in violation of the Act known as the United States Cotton Futures Act, being the Act of August 11, 1916.

687

4.

The said Circuit Court of Appeals erred in refusing to hold that all the testimony in the cause was inadmissable, and should have been excluded because the transaction was in plain violation of said United States Cotton Futures Act.

5.

The said Circuit Court of Appeals erred in refusing to hold that the testimony set out in the Assignment of Errors in said Circuit Court of Appeals in Assignments one to 108 was inadmissable on the ground that the transaction was a violation of the United States Cotton Futures Act.

6.

The said Circuit Court of Appeals erred in refusing to hold that the District Court should have directed a verdict in favor of the plaintiff in error.

7.

The said Circuit Court of Appeals erred in refusing to hold that the District Court erred in refusing to give request numbered two found on page 44 of the printed record, which was in the following language:

"Under the Act of Congress, known as the Cotton Futures Act, and under the Treasury Regulations made thereunder, the evidence in this cause is insufficient to show that the dealing in cotton futures for future delivery referred to in the evidence in this cause and the contracts made for the purchase and sale of said cotton complied with the Cotton Futures Act."

8.

The said Circuit Court of Appeals erred in refusing to hold
688 that the District Court erred in refusing to give request numbered three, found on page 44 of the printed record, which was in the following language:

"Under the Cotton Futures Act of Congress, no legal contract for the future delivery of cotton can be made except by putting said contract in writing. The contracts offered in testimony state

on their face that they are made in compliance with the Cotton Futures Act of Congress, and the regulations of the New Orleans Cotton Exchange. The rules of the New Orleans Cotton Exchange permit oral contracts. The Act of Congress does not permit oral contracts of that kind. Hence under the Act of Congress, the contracts offered in evidence are invalid and cannot be the basis of a recovery in this action."

9.

The said Circuit Court of Appeals erred in refusing to hold that the District Court erred in refusing to give request numbered four, found on page 44 of the printed record, which was in the following language:

"It was the intention of Congress in passing the Cotton Futures Act of Congress to strike down and make illegal and void every contract for the future delivery of cotton, unless said contract was made in accordance with the terms of said Cotton Futures Act. Therefore, if the Internal Revenue of two cents per pound as provided by the Act of Congress, was not paid by the parties to the contract offered in testimony, and if the parties did not enter into the contract as provided by the said Act of Congress, then the entire transaction is illegal and void, and there can be no recovery
689 in favor of the plaintiff.

The Cotton Futures Act of Congress as to the tax provided as follows:

" 'That upon each contract of sale of any cotton for future delivery made at on or in any exchange board of trade or similar institution or place of business, there is hereby levied a tax in the nature of an excise of two cents for each pound of cotton involved in any such contract.' "

10.

The said Circuit Court of Appeals erred in refusing to hold that the District Court erred in refusing to give request numbered five, found on page 45 of the printed record, which was in the following language:

"Section 4 of said Cotton Futures Act is as follows:

'Contracts of said form and contents. That each contract of sale of cotton for future delivery mentioned in section three of this act shall be in writing plainly stating or evidenced by written memorandum showing terms of such contract, including the quantity of the cotton involved and the names and addresses of the seller and

buyer in such contract, and shall be signed by the party to be charged, or by his legal agent in his behalf. If the contract or memorandum specify in bales the quantity of the cotton involved, without giving the weight, each bale shall, for the purpose of this act, be deemed to weigh five hundred pounds.' "

11.

The said Circuit Court of Appeals erred in refusing to hold that the District Court erred in refusing to give request numbered
690 six, found on page 45 of the printed record, which was in the following language:

"Under section 5 of said Cotton Futures Act, it is provided that no tax shall be levied under the act on any contract of sale mentioned in section 3, quoted above, if the contract comply with each of the conditions named in section 5. One of these conditions is that said contract must conform to the requirements of section 4 and the Rules and Regulations made pursuant to that Act. After the passage of said act, certain regulations were made by the Treasury Department of the United States. Acting under the authority of said Act of Congress, the Treasury Department of the United States adopted the following regulations:

'No provision, by-law, rule or custom of any exchange, board of trade, or similar institution or place of business which is inconsistent or in conflict with any requirement or provision of the Act to provide revenue to defray war expenses and for other purposes, approved October 3, 1917, or any regulations thereunder, nor any collateral, or additional agreement or understanding, either verbal or written, respecting the subject matter of such contract or the settlement or fulfillment thereof, which is inconsistent or in conflict with any requirement of said act or the regulations thereunder promulgated by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall exempt any person from the payment of the tax provided for under section 807, Subdivision 5, of said act.'

"The jury are therefore instructed that if there is any provision by law, rule or custom of the New Orleans Cotton Exchange, which is inconsistent with or in conflict with any requirement or provision of the *act of the* Cotton Futures Act or if there is
691 any additional agreement, understanding, either verbal, or written respecting the subject matter of said contract or the settlement or fulfillment thereof, which is in conflict with any requirement of said act, then and in that event the contracts offered

in evidence would be illegal and void, and there can be no recovery. In that regard, if the provisions of the New Orleans Cotton Exchange regulations and rules provide for verbal contracts or if they provide for settlments so as to prohibit the actual delivery of the cotton to the defendant if actual delivery was intended then said regulations would be in conflict with the act of Congress, and the rules of the Treasury Department and in that event said contracts would be invalid and no recovery could be had upon them."

12.

The said Circuit Court of Appeals erred in refusing to hold that the District Court erred in refusing to give request numbered seven, found on page 46 of the printed record, which was in the following language:

"If under the rules and regulations of the New Orleans Cotton Exchange the plaintiffs or the buyer or seller of cotton to or from the defendant had the right to prevent the defendant from actually receiving the cotton contracted for, or if under said regulations there was any impairment of the defendant's right to receive said cotton, then the contracts offered in testimony did not comply with the Cotton Futures Act and the Treasury Regulations thereunder, and if that be the fact, then the plaintiff cannot recover."

13.

The said Circuit Court of Appeals erred in refusing to hold that the District Court erred in refusing to give request numbered eight,
found on page 47 of the printed record, which was in the
692 following language:

"If the defendant on the morning of February 1, 1917, sent to the plaintiffs a telegram, authorizing them to stop his losses on 1,000 bales at 17.20 cents per pound and on 1,000 bales at 17.15 cents per pound, and if there was a custom upon the New Orleans Cotton Exchange, authorizing the plaintiffs upon the receipt of that telegram to sell defendant's cotton at 14 cents per pound, and if that custom was unknown to the defendant then such telegram would not authorize the plaintiffs to sell out defendant's contracts for the future delivery of cotton, if they were valid and at the price of 14 cents per pound. If such are the facts, the sale made by the plaintiffs of 2000 bales of cotton at 14 cents was unauthorized by the defendant and in that event the plaintiff cannot recover."

14.

The said Circuit Court of Appeals erred in refusing to hold that the District Court erred in refusing to give request numbered nine, found on page 47 of the printed record, which was in the following language:

"If the contract was in the form required by the Cotton Futures Act, and if the contracts introduced in evidence were fair and presumptively lawful on their face, yet if there was no intention to deliver the cotton bought and sold or to receive the cotton bought and sold then the contract was illegal and there can be no recovery. A contract for the future delivery of cotton, although fair on its face is void, if the parties to the contract did not intend that there should be actual delivery. In other words, if the parties intended at the time of the making of the contract that said contract should be discharged by the payment of one party to the other of the difference between the contract price of the goods at the date fixed for their delivery or the termination of that contract or the
693 market price of that contract, then said contract is what is known as a wager contract and in that event plaintiffs cannot recover. If the parties intended at the time of the asking of these contracts that there should be no actual delivery of cotton and that settlements should be made upon the difference between the contract price and the market price at the time that the contract should be closed, then said contracts are wagering contracts, and are against public policy and void, and no recovery can be had on any such contracts. If the parties intended to speculate without intending any delivery on the rise and fall in the price of cotton, then said contracts were void and in that event there could be no recovery.

15.

The said Circuit Court of Appeals erred in refusing to hold that the District Court erred in refusing to give request numbered ten, found on page 48 of the printed record, which was in the following language:

"If either party to the contract, that is if the defendant or the plaintiffs, or if the defendant's vendee or vendor, did not intend under these contracts to deliver any cotton or to receive any cotton and if it was intended only to settle as above stated upon the rise and fall in price of cotton then the contracts were wagering contracts, and there can b no recovery in that event."

16.

The said Circuit Court of Appeals erred in refusing to hold that the District Court erred in refusing to give request numbered twelve, found on page 48 of the printed record, which was in the following language:

"In determining the question as to whether the contracts introduced in evidence are illegal and void as being wagering
694 contracts the jury are entitled to take into consideration all the facts and circumstances in the case, including the usages and customs of cotton brokers on exchanges and including the amount of cotton sold on the exchanges and the amount bought thereon and also the business of the defendant and his ability and capacity to take and pay for the amount of cotton purchased. The question on that subject to be determined by the jury is as to whether it was intended by the plaintiffs and the defendant that there should be an actual delivery and receipt of the cotton. If no actual delivery was intended, then the plaintiffs cannot recover. This, if true, defeats the plaintiffs' recovery, although the contracts for the purchase and sale of the cotton may be in writing and may be in the usual form and in accordance with law. If it be true that the parties did not intend the actual delivery of the cotton, they cannot make their transactions valid by placing the same in the form of contracts which are fairly legal on their face. The jury have the right to consider all evidence introduced, including that outside of and beyond the contracts. They are not bound to find that an actual delivery was intended even if the contract so recites. If the evidence shows that no actual delivery was intended, then the contracts are void, although delivery may be provided for in the contracts and if they are void, then there can be no recovery."

17.

The said Circuit Court of Appeals erred in refusing to hold that the District Court erred in refusing to give request numbered fourteen, found on page 49 of the printed record, which was in the following language:

"If the parties, the plaintiffs and the defendant, or the latter's vendors or vendees, at the time of entering into the transactions, did not intend to deliver any cotton on the contract, and if it was their intention not to deliver any cotton [byt] to take profits or
losses by the rise or fall in the price of cotton, then said
695 contracts are void and if such are the facts, then even if the defendant agreed to pay the balance, such an agreement in

that event would not be binding and under those facts, the plaintiffs cannot recover on any agreement by defendant to pay, if he made such agreement.

18.

The said Circuit Court of Appeals erred in refusing to hold that the District Court erred in refusing to give request numbered fifteen, found on page 50 of the printed record, which was in the following language:

"Some reference has been made in the evidence to the question of hedging, it being contended that hedging was legal. On that question the court instructs the jury that if a holder of spot cotton in order to recoup his loss by a fall in the price of that cotton, sells futures without any intention on his part to deliver the cotton on the futures contract, and if the futures contract is made without any intention to accept or deliver cotton thereon, but to take or make profit by the fall of the price in futures, then under those circumstances the said futures contract would be unlawful and void; and there could be no recovery in a case of that kind where the right of recovery is based upon the fall in the price of the futures."

Wherefore, the plaintiff in error prays that the judgment of the Circuit Court of Appeals for the Eighth Circuit in the said case, affirming the judgment of the District Court for the Western District of Arkansas, Fort Smith Division, be in all things reversed, and the cause remanded and for such other and further relief as may be proper in the premises.

FRED BROWNE,
By James B. McDonough,
His Attorney.

Copy received this 15 day of May, 1921.

BEN CRAVENS,
IRA D. OGLESBY,
Counsel for defendants in error.

(Endorsed): Filed in U. S. Circuit Court of Appeals, May 20, 1921.

696 (Cost Bond on Writ of Error from Supreme Court, U. S.)

Know All Men By These Presents: That we, Fred Browne, as principal and M. T. Tancred, A. N. Sicard and F. A. Handlin, as sureties are held and firmly bound unto Charles B. Thorn, William T. Maginnis, Samuel C. Coleman, and Miles J. Kehoe, Partners doing business as Thorn & Maginnis, the defendants in error, and each of them in the penal sum of One Thousand Dollars ($1000.00) to the payment of which well and truly to be made and done, we bind ourselves, our heirs, administrators, successors and assigns, jointly and severally and firmly by these presents.

Sealed with our seals and dated this the 16 day of May, 1920.

The condition of the above obligation is such that

Whereas, heretofore to-wit: on April 15, 1921, the defendants in error above named recovered a judgment against Fred Browne, the principal above named, for the amount set out in the judgment and decree of the United States District Court, Western District of Arkansas, Fort Smith Division, in said cause, from which said judgment the said Fred Browne obtained a writ of error from said court, and a citation citing and adminishing the defendants in error to appear in the Supreme Court of the United States, at the city of Washington, District of Columbia, thirty (30) days from and after the date of said citation and praying for a reversal of said judgment.

Now, if the said principal herein named shall and will duly prosecute said writ of error to effect and answer all costs, if they fail to make good their plea, then the above obligation to be null and void; otherwise to remain in full force and virtue in law.

FRED BROWNE, Principal.
M. T. TANCRED,
A. N. SICARD,
F. A. HANDLIN,
Sureties.

697 Approved pursuant to stipulation of counsel this 20th day of May, 1921.

WALTER H. SANBORN,
Senior U. S. Circuit Judge,
Eighth Circuit.

(Endorsed): Filed in U. S. Circuit Court of Appeals, May 20, 1921.

(Supersedeas Bond on Writ of Error from Supreme Court, U. S.)

Know All Men By These Presents: That we, Fred Browne, as principal and M. T. Tancred, A. N. Sicard and F. A. Handlin as sureties are held and bound jointly and severally unto Charles B. Thorne, William T. Maginnis, Samuel C. Coleman and Miles J. Kehoe, Partners, doing business as Thorn & Maginnis, defendants in error, herein in the just sum of Thirty-five Thousand Dollars ($35,000.00) to be paid to the said Defendants in Error as their several interests may appear, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 16 day of May A. D. 1921.

The condition of the above obligation is as follows:

Whereas on the 15th day of April, 1921, the United States Circuit Court of Appeals of the Eighth Circuit in a cause depending in said court between Fred Browne, plaintiff in error and Charles B. Thorn, William T. Maginnis, Samuel C. Coleman and Miles J. Kehoe, Partners, doing business as Thorn & Maginnis, Defendants in Error, Judgment was rendered by the consideration of
698 said Circuit Court of Appeals, against the plaintiff in error, above named, and the said plaintiff in error has obtained a writ of error to reverse the judgment and decree of said United States Circuit Court of Appeals, and also a citation directed to the defendants in error above named, citing and [adminishing] them to appear in the Supreme Court of the United States at the City of Washington, District of Columbia, thirty (30) days from and after the date of said citation.

Now, therefore, the condition of the above obligation is such that if the said Fred Browne shall prosecute his writ of error to effect and answer all damages and costs, if he fails to make good his plea, then the above obligation to be void; else to remain in full force and effect.

FRED BROWNE,
Principal.
M. T. TANCRED,
A. N. SICARD,
F. A. HANDLIN,
Sureties.

Approved pursuant to stipulation of counsel this 20th day of May, 1921.

WALTER H. SANBORN,
Senior U. S. Circuit Judge,
Eighth Circuit.

(Endorsed): Filed in U. S. Circuit Court of Appeals, May 20, 1921.

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(Stipulation as to Supersedeas Bond and Cost Bond.)

It is hereby stipulated by and between counsel for the parties above named that the sureties on the supersedeas bond above set forth are good and in our opinion said supersedeas bond is ample and in our opinion it will be proper for the said bond to be duly approved by the proper authorities.

699 JAMES B. McDONOUGH,
Attorney for Plaintiff in Error.
BEN CRAVENS,
IRA D. OGLESBY,
Attorneys for Defendants in Error.

May 16, 1921.

(Endorsed): Filed in U. S. Circuit Court of Appeals, May 20, 1921.

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700 (Writ of Error from Supreme Court, U. S., and Clerk's Return.)

United States of America—ss.

The President of the United States of America, To the Honorable the Judges of the United States Circuit Court of Appeals for the Eighth Circuit,—Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court of Appeals, before you, at the December Term, 1920, thereof, between Fred Browne, Plaintiff in Error, and Charles B. Thorn, William T. Maginnis, Samuel C. Coleman, and Miles J. Kehoe, partners doing business as Thorn & Maginnis, Defendants in Error, a manifest error hath happeed, to the great damage of the said Fred Browne as by his complaint appears.

We being willing that error, if any hath been, should be corrected, and full and speedy justice done to the parties in this behalf, do command you, if judgment be therein given, that then, under

your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the said record and proceedings aforesaid at the City of Washington, D. C., and filed in the office of the Clerk of the Supreme Court of the United States on or before the 20th day of June, 1921, to the end that the record and proceedings aforesaid being inspected, the Supreme Court of the United States may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Joseph McKenna, Senior Associate Justice of the Supreme Court of the United States, this twentieth day of May, in the year of our Lord one thousand nine hundred and twenty-one.

Issued at office in the City of St. Paul, Minnesota, with the seal of the United States Circuit Court of Appeals, and dated aforesaid.

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals, Eighth Circuit.

(Seal)

Return to Writ.

United States of America, Eighth Circuit,—ss.

In obedience to the command of the within Writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the record and proceedings in the within entitled cause, with all things concerning the same.

In Witness Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this 24th day of May, A. D. 1921.

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals, Eighth Circuit.

(Endorsed): No. 5602. Fred Browne, Plaintiff in Error, vs. Charles B. Thorn, et al. Writ of Error from Supreme Court, U. S.

Filed May 20, 1921, E. E. Koch, Clerk.

701 (Citation on Writ of Error from Supreme Court, U. S.)

In the Supreme Court of the United States.

Fred Browne — Plaintiff in Error.

vs.

Charles B. Thorn, William T. Maginnis, Samuel C. Coleman, and Miles J. Kehoe, Partners, Doing Business as Thorn & Maginnis, Defendants in Error.

United States of America.

*Citation.*

To Charles B. Thorn, William T. Maginnis, Samuel C. Coleman, and Miles J. Kehoe, Partners doing business as Thorn & Maginnis:

You and each of you are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, District of Columbia, within thirty (30) days from and after the date this citation bears date, pursuant to a writ of error filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, wherein Fred Browne is plaintiff in error and you and each of you are defendants in error, to show cause, if any there be, why the judgment rendered against the plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Walter H. Sanborn, Senior United States Circuit Judge, in and for the Eighth Circuit, this 20th day of May, 1921.

WALTER H. SANBORN,
Senior United States Circuit Judge
for the Eighth District.

Waiver of Service of Citation.

The defendants in error, through their counsel hereby accept service of the foregoing citation and waive any further service thereof upon the defendants in Error.

This 16 day of May, 1921.

BEN CRAVENS,
IRA D. OGLESBY,
Attorneys for defendant in Error.

(Endorsed): No. 5602. Fred Browne, Plaintiff in Error vs. Charles B. Thorn, et al., Defendants in Error. Citation on Writ of Error from Supreme Court, U. S.

Filed May 20, 1921, E. E. Koch, Clerk.

702 (Clerk's Certificate.)

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Western District of Arkansas, as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said Circuit Court of Appeals wherein Fred Browne was plaintiff in Error, and Charles B. Thorn, et al., partners doing business as Thorn & Maginnis, were Defendants in Error, No. 5602, as full, true and complete as the originals of the same remain on file and of record in my office.

I do further certify that the original writ of error and Clerk's return and also the original citation and waiver of service are hereto attached and herewith returned.

In testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this twenty-fourth day of May, A. D. 1921.

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

(Seal)

In the Supreme Court of the United States.

#933, October Term, 1920, and Which is the Same Cause as #335, October Term, 1921.

FRED BROWNE, Petitioner,

vs.

CHARLES B. THORN et al., Respondents.

*Stipulation of Counsel for the Use of the Certified Transcript Already of Record and on File With the Clerk of the Supreme Court of the United States.*

It is hereby stipulated and agreed by and between counsel for the petitioner and counsel for the respondents, that the Clerk of the Circuit Court of Appeals of the Eighth Circuit being Clerk of the court to which the writ of certiorari herein is addressed, and with whom the writ of certiorari from the Clerk of the Supreme Court of the United States has been filed, shall, as soon as may be, file this stipulation in the Clerk's office of the Circuit Court of Appeals of the Eighth Circuit, and send a certified copy of the same under his official seal, to the Clerk of the Supreme Court of the United States, as his return to the writ of certiorari in the cause above named.

JAMES B. McDONOUGH,
*Counsel for Petitioner.*

BEN CRAVENS,
IRA D. OGLESBY,
CRAVENS, OGLESBY & CRAVENS,
*Counsel for Respondents.*

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 5602. Fred Browne, Plaintiff in Error, vs. Charles B. Thorn, et al., partners, doing business, etc., Stipulation as to return to writ of certiorari. Filed Jun. 20, 1921. E. E. Koch, Clerk.

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Eighth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Fred Browne is plaintiff in error, and Charles B. Thorn, William T. Maginnis, Samuel C. Coleman, and Miles J. Kehoe, partners, doing business as Thorn & Maginnis, are defendants in error, No. 5602, which suit was removed into the said Circuit Court of Appeals by virtue of a writ of error to the District Court of the United States for the Western District of Arkansas, and we, being willing for cer-

tain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Joseph McKenna, Senior Associate Justice of the Supreme Court of the United States, the fourteenth day of June, in the year of our Lord one thousand nine hundred and twenty-one.

JAMES D. MAHER,
*Clerk of the Supreme Court of the United States.*

[Endorsed:] 335-21—28,290. File No. 28,290. Supreme Court of the United States, October Term, 1920. No. 933. Fred Browne vs. Charles B. Thorn et al., etc. Writ of Certiorari. Filed Jun. 20, 1921. E. E. Koch, Clerk.

*Return to Writ.*

UNITED STATES OF AMERICA,
*Eighth Circuit, ss:*

In obedience to the command of the within writ of certiorari and in pursuance of the stipulation of the parties, a full, true and complete copy of which is hereto attached, I hereby certify that the transcript of record furnished with the application for a writ of certiorari in the case of Fred Browne, Plaintiff in Error, v. Charles B. Thorn, et al., partners, doing business, etc., No. 5602, is a full, true and complete transcript of all the pleadings, proceedings and record entries in said cause as mentioned in the certificate thereto.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this twenty-first day of June, A. D. 1921.

[Seal of United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,
*Clerk U. S. Circuit Court of Appeals for the Eighth Circuit.*

[Endorsed:] File No. 28,290. Supreme Court U. S., October Term, 1921. Term No. 335. Fred Browne, Petitioner, vs. Charles B. Thorn et al., etc. Writ of certiorari and return. Filed June 23, 1921.

FILED
MAY 31 1921
JAMES D. MAHER,
CLERK

No. 8[redacted]5

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1920.

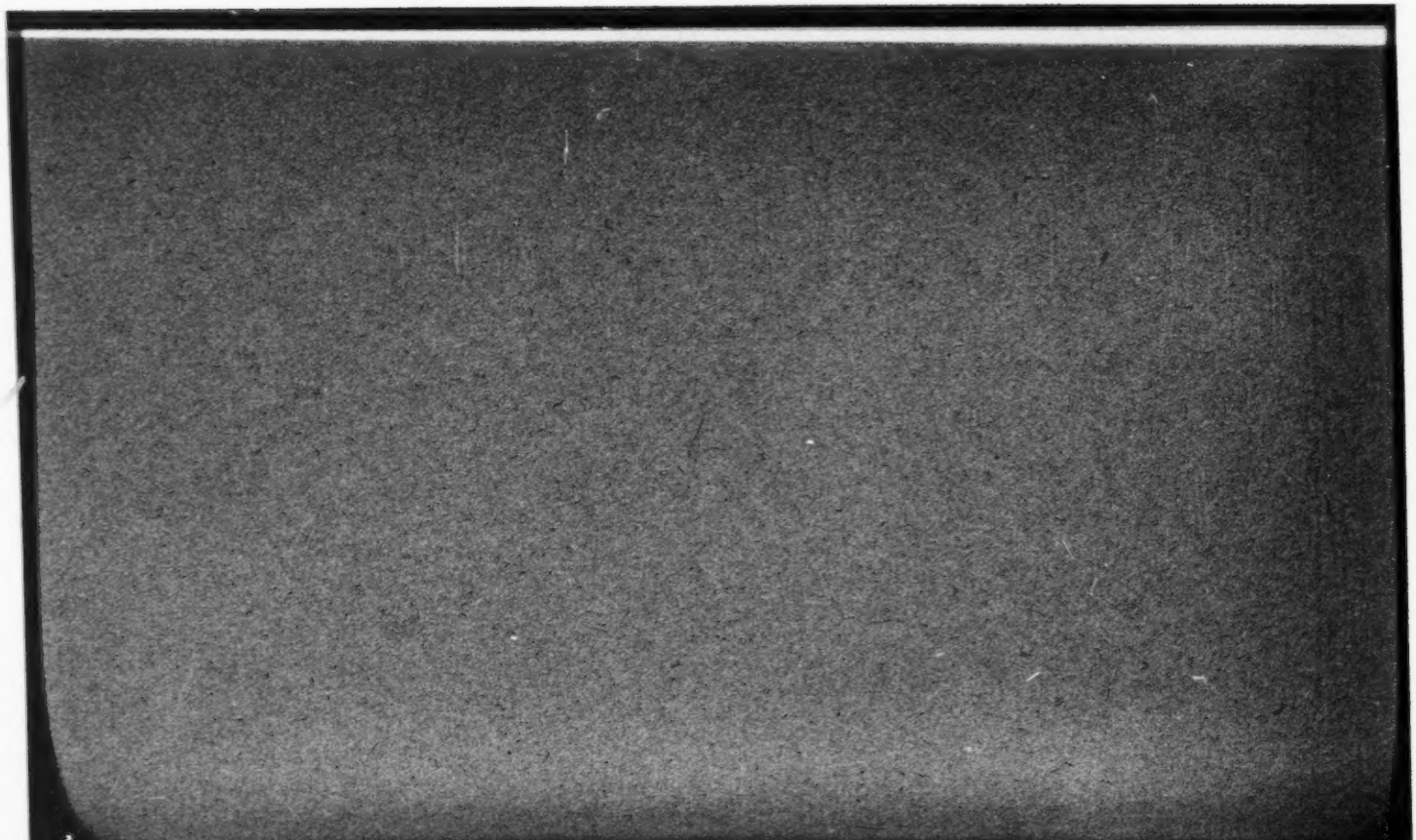
FRED BROWNE, PETITIONER,

VS.

CHARLES B. THORN, WILLIAM T. MAGINNIS, SAMUEL C. COLEMAN, AND MILES J. KEHOE, PARTNERS, DOING BUSINESS AS THORN & MAGINNIS, RESPONDENTS.

## PETITION AND APPLICATION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS OF THE EIGHTH CIRCUIT.

JAMES B. McDONOUGH,
*Counsel for Petitioner.*



## INDEX.


Page

Brief in Support of Petition for Writ of Certiorari 35

Error of the Court in Refusing Instructions Based Upon the Cotton Futures Act..... 88

Error in Refusing Instruction No. 7..... 91

Error in Refusing Defendant's Request No. 8..... 93

Error in Refusing Instruction No. 13..... 96

Error in Refusing Instruction No. 14..... 97

Error in Refusing Instruction No. 15..... 98

From the Undisputed Evidence, the Contract was a Gambling Venture, said Evidence Showing That There was no Intention to Receive or Deliver Cotton Involved in the Purchase or Sale..... 68

Petition and Application for Writ of Certiorari to the Circuit Court of Appeals of the Eighth Circuit. . . ..... 1

Summary and Short Statement of the Matter Involved. . ..... 2

Specification of Errors. . ..... 22

The Cotton Futures Act Requires the Names and Addresses of the Buyer and the Seller to be Plainly Written in the Contract..... 16

Page

The Dealings as Shown by the Undisputed Evidence, are in Violation of the Treasury Regulations Made in Pursuance of the Act of Congress. . . . . 16

The Brokers' Slips Offered in Testimony Fail to Show a Contract in Compliance with the United States Cotton Futures Act. . . . . 35

The Meaning of the Words, "The Party to be Charged," in the Act of Congress. . . . . 51

The Offered Contracts or Alleged Contracts are Illegal Under the Cotton Futures Act as Well as Under the Rules of the New Orleans Cotton Exchange. . . . . 60

The Court Erred in Holding that in the Charge to the Jury, that the Intention Not to Deliver Must Exist in Both Petitioner and the Respondents. . 85

The Court Erred in Holding that Hedging was not Dealing in Futures. . . . . 86

Under the Treasury Regulations, the Offered Contracts do not Comply with Section 5 of the Act of Congress. . . . . 55

## Table of Cases.

Page

Arthwine Natchette Investment Co. vs. McFarlan (Kan.), 144 Pac. 482..... 69

Bardridge vs. Cutler (Ill.), 48 N. E. 125..... 69

Bartlett vs. Smith, 13 Fed. 263..... 46

Baxter vs. Sherman, 73 Minn. 434; s. c. 76 N. W. 211..... 95

Bernard vs. Backhaus, 52 Wis. 593..... 70

Bibb vs. Allen, 149 U. S. 481..... 46

Bibb vs. Allen, 149 U. S. 481..... 69

Bibb vs. Allen, 149 U. S. 481..... 71

Board of Trade of the City of Chicago vs. Christie Grain Co., 198 U. S. 236..... 71

Brown vs. Snider, 126 Mich. 198..... 44

Brown on Statute of Frauds, Section 244, and cases cited in 29 Am. & Eng. E. of L. p. 858..... 51

Brown on Statute of Frauds, Section 365..... 52

Carpenter vs. Beal-McDonald & Co., 222 Fed. 453, and cases there cited..... 71

Cleage vs. Laidley, 149 Fed. 346..... 69

Cobb vs. Prell, 15 Fed. 774..... 46

Cohn vs. Brinson (Miss.), 73 So. 59..... 71

Connor vs. Robertson (La.), 55 Am. Rep. 521..... 70

20 Cyc. p. 272, Note 77..... 44

Dickson vs. Thomas, 97 Pa. St. 278..... 46

Emery vs. Jenison, 131 U. S. 336..... 69

E. O. Stanard Milling Co. vs. Flower (La.), 15 So. 16..... 70

Everingham vs. Meigham, 55 Wis. 354..... 46

Page

Exchange Nat'l Bank vs. Little (Ark.), 164 S. W. 731. . . . . 95
Fareira vs. Gabell, 89 Pa. St. 89. . . . . 46
Ferguson vs. Gooch, 94 Va. 1; s. c. 26 S. E. 397. . . 95
6 Fed. Stat. Ann. p. 984, and cases there cited. . . . 38
6 Fed. Stat. Ann. p. 984, and cases there cited. . . . 86
Gilmer vs. Young, 122 N. C. 806. . . . . 95
Harnett vs. Wilson (Calif. App.), 161 Pac. 281. . . . 71
Hubbard vs. Lowe, 226 Fed. 135. . . . . 36
Hughes vs. Barrell, 167 Ill. App. 100. . . . . 96
Hurt vs. Miller, 190 N. Y. 553. . . . . 96
In re Green, 7 Biss. 338. . . . . 46
Irwin vs. Williar, 110 U. S. 499. . . . . 46
Irwin vs. Williar, 110 U. S. 499. . . . . 69
Irwin vs. Williar, 110 U. S. 499. . . . . 95
James vs. Clement, 223 Fed. 385. . . . . 71
Jamieson vs. Wallace, 167 Ill. 388. . . . . 70
Johnson & Moran vs. Buchanan (Tex.), 116 S. W. 875. . . . . 95
Katz vs. Nast, 187 Fed. 529. . . . . 96
King vs. Johnson (Calif.), 157 Pac. 531. . . . . 69
Kirkpatrich vs. Richter (Ga.), 91 S. E. 51. . . . . 71
Lee vs. Vaughn Seed Store, 101 Ark. 69. . . . . 43
Lee vs. Vaughan Seed Store, 101 Ark. 68. . . . . 52
Ling vs. Malcolm (Conn.), 59 Atl. 698, s. c. 77 Conn. 517. . . . . 96
Marx vs. Bell, 48 Ala. 497. . . . . 44
McIlroy vs. Seery, 48 Am. Rep. 110. . . . . 54

| | Page |
|---|---|
| McSherry vs. Blanchfield, 68 Kan. 310 | 95 |
| Medlin Milling Co. vs. Moffett Com. Co., 218 Fed. 686 | 69 |
| Metchert vs. Tel. Co., 3 McCrary, 521 | 46 |
| New Roads Oil Mill Co. vs. Kline, Wilson & Co., 154 Fed. 296 | 95 |
| Nicol vs. Ames, 173 U. S. 509 | 47 |
| Nicol vs. Ames, 173 U. S. 509 | 55 |
| North vs. Phillips, 89 Pa. St. 250 | 46 |
| Orbis Bros. vs. Holt-Morgan Mills (N. C.), 91 S. E. 948 | 71 |
| Pate vs. Wilson Bros. Mercantile Co. (Tex.), 208 S. W. 235 | 60 |
| Phelps vs. Holderness, 56 Ark. 300 | 46 |
| Raymond vs. Leovett, 46 Mich. 447 | 46 |
| Richardson vs. Show, 209 U. S. 365 | 96 |
| Robbins vs. Maher (N. D.), 103 N. W. 755 | 95 |
| Ruchizky vs. DeHaven, 97 Pa. St. 202 | 46 |
| Sampson vs. Shaw, 101 Mass. 145 | 46 |
| Smith vs. Jones, 66 Ga. 338 | 44 |
| Smith vs. Jones (Ga.), 42 Am. Rep. 72 | 54 |
| Stafford Co. Grain Co. vs. R. M. & E. Co. (Kan.), 146 Pac. 1139 | 70 |
| Steers vs. Lashley, 6 T. R. 61 | 46 |
| Talbot vs. Mattox, etc., R. R. Co. (Okla.), 109 Pac. 128 | 95 |
| Tenny vs. Foote, 95 Ill. 99 | 46 |
| U. S. Legal Code, Section 322 | 86 |
| U. S. Penal Code, Section 332 | 38 |

Page

35 U. S. Statutes at Large, 1152..... 38
35 U. S. Stat., 1152..... 86
Waldron vs. Johnson, 86 Fed. 757..... 71
Watson vs. Winston (Tex.), 43 S. W. 852..... 44
Weare Com. Co. vs. People, 209 Ill. 528..... 70
Weir vs. Dwyer, 114 N. Y. S. 528..... 95
Williams vs. Robinson, 73 Me. 186..... 43
Williamson vs. Majors (5th Cir.), 169 Fed. 754.. 70
Wilson vs. Louiston Mill Co., 150 N. Y. 314..... 44
Winston vs. F. A. Longshore, 116 La. 21, s. c. 40 So. 517..... 96
Wolf vs. Andres (Tex.), 196 S. W. 266..... 71

IN THE

# Supreme Court of the United States

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OCTOBER TERM, 1920.

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FRED BROWNE, PETITIONER,

VS.

CHARLES B. THORN, WILLIAM T. MAGINNIS, SAMUEL C. COLEMAN, AND MILES J. KEHOE, PARTNERS, DOING BUSINESS AS THORN & MAGINNIS, RESPONDENTS.

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## PETITION AND APPLICATION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS OF THE EIGHTH CIRCUIT.

*To the Honorable Supreme Court of the United States:*

Comes now Fred Browne, the above named petitioner, and files his petition and application to this Honorable Court to grant a writ of certiorari to review the proceedings of the Circuit Court of Appeals of the Eighth Circuit, in a cause recently therein pending, and numbered 5602, in which cause this petitioner was plaintiff in error and the respondents herein were defendants

in error, and makes the following summary and short statement of the matter involved and the general reasons relied on for the allowance of the writ.

**Summary and short statement of the matter involved.**

There is necessarily involved a construction of the United States Cotton Futures Act. If petitioner's contention is correct said United States Cotton Futures Act prohibits respondents from a recovery. Hence the prime question before this court is the meaning of the United States Cotton Futures Act. Hence a Federal question is involved. Said Cotton Futures Act is found in Federal Statutes Annotated, 1918 Sup. page 360. See 39 U. S. page 476.

Section 4 of said Act of Congress is as follows:

> "That each contract of sale of cotton for future delivery mentioned in section three of this act shall be in writing plainly stating, or evidenced by written memorandum showing, the terms of such contract, including the quantity of the cotton involved *and the names and addresses of the seller and buyer in such contract, and shall be signed by the party to be charged, or by his agent in his behalf*. If the contract or memorandum specify in bales the quantity of the cotton involved, without giving the weight, each bale shall, for the purpose of this act, be deemed to weigh five hundred pounds."

It is the contention of the petitioner that the undisputed evidence in this record sustains the contention that the alleged future contracts between the respondents and

your petitioner did not comply with that section of said United States Cotton Futures Act. For a number of years the respondents were members of the New Orleans Cotton Exchange and were such members at the time of the making of the future contracts in question.

In September, 1916 (Tr. 6) the petitioner opened an account with the respondents. That account appears on pages 6 and 7 of the transcript of the record, which is hereto attached and made a part of this petition. This suit was brought to recover the balance on that account. The complaint alleges (Tr. 3) that the plaintiffs are citizens and residents of the parish of Orleans, State of Louisiana, and that the defendant is a citizen and resident of the Fort Smith Division of the Western District of Arkansas. It is then alleged that between January 25, 1917, and January 31, 1917, the respondents at the special instance and request of the petitioner bought for the risk of the petitioner 2000 bales of cotton for delivery in the month of May, 1917, on the New Orleans Cotton Exchange, "and subject to its by-laws, rules and conditions, and subject also to the United States Cotton Futures Act, section 5." It is then alleged that on February 1, 1917, at the special instance and request of the petitioner, the respondents sold for the account and risk of the petitioner 2000 bales of cotton for delivery in the month of May, 1917, on the New Orleans Cotton Exchange, and subject to its by-laws, rules and conditions and subject also to the United States Cotton Futures Act, section 5. The purchase price ranged around 17 cents. The sale price was alleged to be four-

teen cents. It is then alleged that the plaintiffs in and about the purchases and sale of said cotton expended $29675, and that respondents earned a commission of $300.00 and that petitioner had on deposit with the respondents $6760.00, leaving a balance of $23215. Reference is then made to the itemized statement on page 6, which shows innumerable transactions in cotton futures between petitioner and respondents, and shows a balance as stated.

The petitioner was not a member of the New Orleans Exchange. He lived at Fort Smith, Arkansas. According to his statement he had no knowledge of the rules and regulations of the New Orleans Cotton Exchange. The alleged purchase and sale of the cotton was made between the respondents as members of the New Orleans Cotton Exchange, and other members of said New Orleans Cotton Exchange, and said purchase and sales were made on the floor of the exchange and during its hours of business. To support the allegations relating to the purchase and sale and to show that the respondents complied with the United States Cotton Futures Act, said respondents introduced what they call brokers sale notes or brokers slips. *The name of the petitioner did not in any manner appear in those notes. Numerous sales were frequently covered by each note* or slip or contract. The brokers on both sides were merely agents of their principals. The names of the principals in no manner appeared in the so-called bought and sold notes. Some times as many as a thousand bales would be covered by a sold note and a corresponding

bought note and the respondents would select out of that cotton a certain number of bales (100 or 200), and say that those bales were bought for the account of the petitioner. As the complaint alleges that the final transaction began on January 25, it will be helpful to understand the exact situation to consider the bought and sold notes for that day. On page 76 of the transcript the following sold note appears:

"C. P. Ellis & Company,
Cotton Exchange Building.

New Orleans, La., Jan. 25, 1917.

Sold to Thorn & Maginnis of New Orleans, La., and agreed to Deliver them subject to the By-laws, Rules, and Conditions of the New Orleans Cotton Exchange and subject to the United States Cotton Futures Act, Section 5.

| Bales Cotton | Delivery | At Cents per Pound for middling |
|---|---|---|
| One Hundred | May | 16.70 |
| Three Hundred | May | 16.83 |
| Two Hundred | May | 16.83 |
| One Hundred | May | 16.90 |
| Two Hundred | May | 16.81 |
| One Hundred | May | 16.84 |

Signed C. P. Ellis & Co. of New Orleans, La."

The bought note corresponding to that appears on page 407, and is as follows:

"C. P. Ellis & Co.,
502 Hibernia Bank Building.

New Orleans, La. Jan. 25, 1917.

Bought from C. P. Ellis & Co. of New Orleans, La., and agreed to receive from them subject to the By-laws, Rules and Conditions of the New Orleans Cotton Exchange and subject to the United States Cotton Futures Act, Sec. 5 and amendments.

| Bales Cotton | Delivery | At Cents per Pound for middling |
|---|---|---|
| One Hundred | May | 16.70 |
| Three Hundred | May | 16.83 |
| Two Hundred | May | 16.83 |
| One Hundred | May | 16.90 |
| Two Hundred | May | 16.81 |
| One Hundred | May | 16.84 |

Duplicate (Signed) Thorn & Maginnis."

These papers are sometimes referred to as bought and sold notes and sometimes as the broker's contract slips. The respondents offered proof (77) which was admitted in testimony that of the thousand bales covered in the above broker's slip 100 at the price of 16.83 cents was bought by Thorn & Maginnis, the respondents for the account of the petitioner. The above broker's slips illustrate precisely the alleged written contracts covering the transactions and are slips which are claimed by the respondents to be contracts in writing in compliance

with the United States Cotton Futures Act. The petitioner claims that said slips are not contracts in writing, are not signed by the party to be charged and do not in any manner comply with the Cotton Futures Act and do not comply with the treasury regulations based thereon. As appears on page 76 of the transcript the petitioner objected to the introduction of these bought and sold slips on the specific ground that neither the name of Fred Browne, the petitioner nor the name of the principal who stood back of C. P. Ellis & Company, and who was the *seller*, if Fred Browne, the purchaser, was the *buyer*, appeared on this broker's slip. It was therefore contended that said broker's slip was not signed by the party to be charged within the meaning of the United States Cotton Futures Act. Objection was also made on the ground that the respondents selected out of the 1000 bales covered by these broker's slips 100 bales for Fred Browne, the petitioner. Therefore oral testimony was permitted to show that Fred Browne, the petitioner was interested in that broker's slip. Objection was made to the introduction of every broker's slip of which the above are fair illustrations that said broker's slips did not comply with the United States Cotton Futures Act and did not comply with the Treasury regulations made in pursuance thereof. The bought and sold slips of the final transaction on February 1 are also illustrative and will be given. The sold slip appears on page 87 as Exhibit 28, and is as follows:

"PLAINTIFF'S EXHIBIT 28.

Statement of Purchase & Sale 2000 Bales Cotton May delivery at No

By Thorn & Maginnis, for acct. of Mr. Fred Browne.

Subject to the by-laws, rules and conditions of the Exchange where executed and subject to the United States Cotton Futures Act, section 5.

| Bought | | | Sold | | |
|---|---|---|---|---|---|
| Jan. 25. | 2 | 16.83 | Feb 1 | 20 | 14.00 |
| 25 | 4 | 16.84 | | | |
| 27 | 2 | 17.06 | | | |
| 29 | 4 | 17.08 | | | |
| 29 | 3 | 16.88 | | | |
| 30 | 2 | 16.93 | | | |
| 31 | 3 | 17.13 | | | |

(Duplicate)

No. 25277

5935 pts. loss 29675
Brokerage 300
Telegrams
Net Dr. 29975

Thorn & Maginnis
Per L

E & O. E. New Orleans, La. 2-1-1917."

The bought slip covering the same transaction appears on page 86 as Exhibit 27, and is as follows:

"PLAINTIFF'S EXHIBIT 27.

Office of Thorn & Maginnis
209 Varieties Bldg.

New Orleans La. Feb. 1, 1917.

Bought from Messrs. Thorn & Maginnis, of New Orleans, La., and agreed to receive from them subject to the By-Laws, Rules, and Conditions of the New Orleans Cotton Exchange and subject to the United States Cotton Futures Act, Section 5.

| Bales Cotton | Delivery | At Cents per pound for middling. |
|---|---|---|
| Twenty Hundred | May | 14 cents |
| One Hundred | May | 14.20 |
| One Hundred | May | 14.25 |
| One Hundred | July | 16.10 |
| One Hundred | May | 14.45 |
| Three Hundred | July | 16.10 |
| One Hundred | July | 16.10 |
| One Hundred | May | 14.80 |
| One Hundred | May | 14.50 |

(Signed) Airy & Stouse."

The respondents, over petitioner's objection were permitted to testify that the 2000 bales for May delivery in those slips sold at 14 cents was for the account of Fred Browne, the petitioner. The District Court at the second trial admitted all of the evidence including the broker's slip above referred to, and sent the case to the jury. The jury returned a verdict in favor of the respondents for the full amount asked for with interest.

As above shown, Judge Youmans of the District Court on the first trial held that the deals in futures were in violation of the Cotton Futures Act, and hence there could be no recovery. On respondent's appeal from the result of that first trial as heretofore stated, Judge Garland adopted the view of Judge Youmans. On that question is the dissenting opinion of Judge Garland, we find the following:

> "Coming to the Cotton Futures Act, I may say that as the present action is not one to enforce the contracts for the purchase and sale of cotton, Section 12 of that act above quoted has no application. The serious question presented by the record is this: Laying aside the question of gambling, did the evidence offered show that the plaintiffs knowingly engaged in an illegal business or transaction in the purchase and sale of the cotton? If so, plaintiffs cannot recover and the exclusion of the evidence was not error. *Irwin* v. *Williar*, 110 U. S. 499; *Bibb* v. *Allen*, 149 U. S. 481. *supra; In re Green*, 7 Biss. 338; *Metchert* v. *Tel. Co.*, 3 McCrary, 521; *Bartlett* v. *Smith*, 13 Fed. 263; *Raymond* v. *Leovett*, 46 Mich. 447; *Cobb* v. *Prell*, 15 Fed. 774; *Steers* v. *Lashley*, 6 T. R. 61; *Everingham* v. *Meighan*, 55 Wis. 354; *Fareira* v. *Gabell*, 89 Pa. St. 89; *North* v. *Phillips*, 89 Pa. St. 250; *Ruchizky* v. *DeHaven*, 97 Pa. St. 202; *Dickson* v. *Thomas*, 97 Pa. St. 278; *Sampson* v. *Shaw*, 101 Mass. 145; *Tenny* v. *Foote*, 95 Ill. 99; *Phelps* v. *Holderness*, 56 Ark. 300.
>
> "Whether the business was illegal depends upon the fact as to whether it was conducted in violation of the Cotton Futures Act, as Section 14 of that act, above quoted, makes it a crime punishable by fine and imprisonment for any person to violate any of its provisions. There is no pretense that the tax

imposed by section 3 was paid. Section 5, however, provides that the tax need not be paid on any contract of sale, if the contract comply with the conditions named in said section, assuming that the memorandums offered in evidence constituted the contract mentioned in the Cotton Futures Act, it appears that they contain this endorsement: 'Subject to the United States Cotton Futures Act, section 5.' Under the law, this incorporated into the contract all of the provisions of section 5 except subdivisions first and second."

In further discussing the invalidity of the transactions, because in violation of the Cotton Futures Act, Judge Garland, in the dissenting opinion, used the following language:

"I am satisfied that if the memorandums offered could be held to be the contracts referred to in the Cotton Futures Act then they comply substantially with the provisions of Sec. 5, but conceding they do comply with the provisions of Sec. 5, it still remains to be determined, are they evidence of a written contract? The difficult question in the case is, what did Congress mean by the following language found in Section 4: 'And shall be signed by the party to be charged, or by his agent in his behalf.' An instrument in writing not signed by both seller and buyer would not constitute a contract in writing. It is provided by Rule 47 of the New Orleans Cotton Exchange as follows:

" 'It shall be the duty of the seller, on the day on which transactions in contracts take place, or at not later than 9 a. m. on the following day, to furnish a contract or slip, and deliver his own already signed, and the opposite one in blank to the buyer; the latter shall then sign his contract or slip and return it to the seller.'

"Notice may be taken that this is the manner of doing business on the great exchanges of the country. Sometimes the instruments executed are called buyer's slips or sellers' slips, sometimes bought and sold notes. *Nicol* v. *Ames*, 173 U. S. 509.

"The language used by Congress, above quoted, would seem to be unfortunate, as Congress could not make an instrument signed by one party only a contract.

"Some courts, in deciding questions under the Statute of Frauds, have decided that a party to a contract which the law required to be in writing, who did not sign the same may enforce the contract against the party who did, and the language used by Congress might have come from this source, but as the language, if literally interpreted, would be meaningless, because both the seller and the buyer are to be charged is any contract for the purchase or sale of cotton. I think it must be held that the language means that any party to the contract who is to be charged thereby must sign it, either himself, or by his agent. Moreover this is not a suit to charge either party to the contracts of purchase and sale."

Judge Sanborn, in the majority opinion thus stated the ground on which Judge Youmans had directed a verdict in favor of the petitioner herein:

"The ground on which the verdict was directed was that the sellers' slips and the buyers' slips failed to comply with the requirements of the Cotton Futures Act."

Your petitioner, therefore, alleges that if his contention be correct as to the meaning of the act of Congress there could be no recovery against him on the undisputed evidence set forth in the record. The undisputed evi-

dence shows that the method of doing the business on the New Orleans Cotton Exchange was about as follows: The petitioner would send a telegram (10) reading "Buy four deposited two thousand your credit City National." At other times the telegram would read: "Buy four May eighty-four." Each of those telegrams was understood to mean to buy four hundred bales of cotton either at the market or at the price named. Upon receipt of a telegraphic order of that kind, the respondents being brokers on the New Orleans Cotton Exchange would go on the exchange and make a deal with other cotton brokers who had cotton to sell for their principals at the price at which petitioner had authorized respondents to buy cotton. The brokers would then sign the bought and sold slips in the form heretofore given.

The respondents would then notify petitioner by telegram and by letter of the deal that was made. The petitioner's name was not disclosed in any way and the seller to petitioner or the buyer from petitioner was not known to the respondents. There is no evidence to show that either of the brokers disclosed to the other broker the principal for whom the broker was acting. In fact the name of the principal was never discussed with or disclosed to the other side. The only way to tell who the principal was, was to go to the books of the respondents or the books of the other side. Under rule 1, (227) of the New Orleans Cotton Exchange, no outsider could be a party to any contract on the New Orleans Cotton Exchange. The only parties known to the contract under that rule were the brokers who were members of the

New Orleans Cotton Exchange. The Cotton Futures Act is a revenue measure and it was the intention of Congress that all parties to the contract should be known so that the United States Government would have the right to recover from the parties the revenue levied upon the transaction. The petitioner asserts that it was not the intention of Congress in passing the Cotton Futures Act to legalize gambling in futures. The purpose of the Act of Congress was to lessen dealings in futures rather than to increase the same.

I.

**The Cotton Futures Act requires the names and addresses of the buyer and the seller to be plainly written in the contract.**

This requires that the principal back of the broker and his address be written in the contract. If that is not done, the contract is contrary to Section 4 of the said Cotton Futures Act, and is illegal and void.

II.

**The dealings as shown by the undisputed evidence are in violation of the treasury regulations made in pursuance of the Act of Congress.**

It was conceded in the courts below that courts would take judicial knowledge of the treasury regulations. The treasury regulations made in pursuance of said act prohibit the making of verbal contracts. The act of Congress prohibits the making of verbal contracts. In Ar-

ticle 4 of the Treasury Regulations (See Regulations No. 40, page 21) appears the following provisions:

> "No provision, by-law, rule, or custom of any exchange board of trade, or similar institution or place of business which is inconsistent or in conflict with any requirement or provision of the 'Act to provide revenue to defray war expenses, and for other purposes,' approved October 3, 1917, or any regulations thereunder, nor any collateral, or additional agreement or understanding, either verbal or written, respecting the subject matter of such contract or the settlement or fulfillment thereof, which is inconsistent or in conflict with any requirement of said act or the regulations thereunder promulgated by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall exempt any person from the payment of the tax provided for under Section 807, Subdivision 5, of said act."

The petitioner alleges that one of the purposes of that regulation as well as one of the purposes of the Act of Congress, was to prohibit verbal contracts.

Section 3 of Rule 1 of the New Orleans Cotton Exchange Rules and Regulations permits verbal contracts. This rule is found on page 228 of the Transcript. It says: "Verbal contracts (which shall always be presumed to have been made in the form herein prescribed) shall have the same standing, force and effect as written ones, if notice in writing (conforming to the requirements of Section 4 of the United States Cotton Futures Act) of such contract shall have been given by one of the parties thereto to the other party during the day on which such contract was made or the next business day there-

after." The petitioner contends that that rule is in violation of the Cotton Futures Act and in violation of the Treasury Regulations above referred to. The petitioner alleges that the judgment and decree of the United States District Court above referred to, is a final judgment and decree and under the United States Judiciary Act of Congress, your petitioner is entitled to a writ of certiorari from this court to said Circuit Court of Appeals of the Eighth Circuit, in order to bring this cause before this court for a review of the questions involved.

The petitioner further alleges that the question involved is one of great importance. The transactions in Cotton Futures on the great cotton exchanges of New York and New Orleans, and other places in the United States are enormous in volume and number. If the contentions of the petitioner are well taken the United States Government is entitled to enormous sums of revenue upon said contracts because they are not in compliance with said Cotton Futures Act, and therefore the United States Government is entitled to two cents per pound revenue tax on each pound of cotton involved in said contract.

In addition, the petitioner alleges that there was a division among the judges in said Circuit Court of Appeals, two of the judges holding that the transactions were not in violation of the Cotton Futures Act, and one holding that they were in violation of said Cotton Futures Act, and the district judge, prior thereto also held that said transactions were in violation of the said United States Cotton Futures Act.

III.

The petitioner further alleges that upon the undisputed evidence in this cause the said transaction was a gambling venture, and in violation of law and for that reason the respondents are not entitled to recover. The undisputed evidence shows that the respondents and petitioner were buying and selling cotton futures, not with the purpose and intention of delivery of the cotton, but for the purpose of speculating on the rise and fall in the price of the product in the market.

IV.

Your petitioner is also entitled to have this cause reviewed in this court on the further ground that the district court instructed the jury that it was not unlawful to deal in futures if the purpose was to hedge against actual spots. The Circuit Court of Appeals approved that instruction. Your petitioner alleges that such an instruction was error.

Your petitioner hereto attaches a certified copy of the transcript of the record, including all proceedings in the United States Circuit Court of Appeals of the Eighth Circuit and also the order for the appearance of counsel for the petitioner, signed by his counsel, who is a member of the bar of this court, and has also made the deposit required under the rules.

Your petitioner also submits herewith proof of service of notice of the date which is fixed as of the 31st day of May, 1921, for the submission of this cause on application for the writ of petitioner, and also acknowl-

edgment of service of the copies of the petition and brief thereon, as required by the rules.

Your petitioner also submits herewith thirty copies of this petition and the brief in support of the same. Your petitioner also submits herewith nine copies of the record uncertified, containing the proceedings in said Circuit Court of Appeals of this cause.

Your petitioner presents the above papers herewith as a part of his petition and presents his brief herewith, showing more fully his view of the questions involved and specifically pointing out the vital federal questions involved in this controversy.

Your petitioner also alleges that he has applied for and has been granted a writ of error in this cause.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this court, directed to the Circuit Court of Appeals of the Eighth Circuit, commanding said court to certify and send to this court on a day certain to be therein designated a full and complete transcript of the record of all proceedings of said Circuit Court of Appeals in this case, this case being entitled in said Circuit Court of Appeals, *Fred Browne, Plaintiff in Error* v. *Charles B. Thorn, W. D. Maginnis, Samuel C. Coleman and Miles J. Kehoe, Partners, doing business as Thorn & Maginnis, Defendants in Error*, and being numbered in said Circuit Court of Appeals 5602, and having been decided by that court on April 15, 1921, to the end that said cause may be reviewed and determined by this court, as provided by the

laws of the United States, and that your petitioner may have said cause reversed and that he may have such other and further relief in the premises as to this court may seem just and appropriate, and that this cause be reversed and remanded to the District Court, with direction to dismiss the same and to grant a new trial.

FRED BROWNE,
By JAMES B. MCDONOUGH,
*Counsel for Petitioner.*

## SPECIFICATION OF ERRORS.

1.

The said Circuit Court of Appeals erred in affirming the judgment of the United States District Court, Western District of Arkansas, Fort Smith Division, and in not reversing said judgment.

2.

The said Circuit Court of Appeals erred in holding that no error was committed by the said District Court in admitting in evidence in said cause, the objection to said evidence being on the ground that the Cotton Futures Act of Congress was not complied with, and that the undisputed evidence showed that the defendants in error had violated said Cotton Futures Act of Congress.

3.

The said Circuit Court of Appeals also erred in refusing to hold that the undisputed evidence in said cause showed that the transactions on the New Orleans Cotton Exchange were plainly in violation of the act known as the United States Cotton Futures Act, being the Act of August 11, 1916.

4.

The said Circuit Court of Appeals erred in refusing to hold that all the testimony in the cause was inadmissible, and should have been excluded because the transaction was in plain violation of said United States Cotton Futures Act.

5.

The said Circuit Court of Appeals erred in refusing to hold that the testimony set out in the assignment of errors in said Circuit Court of Appeals in assignments 1 to 108 was inadmissible on the ground that the transaction was a violation of the United States Cotton Futures Act.

6.

The said Circuit Court of Appeals erred in refusing to hold that the District Court should have directed a verdict in favor of the plaintiff in error.

7.

The said Circuit Court of Appeals erred in refusing to hold that the District Court erred in refusing to give request numbered two found on page 44 of the printed record, which was in the following language:

> "Under the Act of Congress, known as the Cotton Futures Act, and under the treasury regulations made thereunder, the evidence in this cause is insufficient to show that the dealing in cotton for future delivery referred to in the evidence in this cause and the contracts made for the purchase and sale of said cotton complied with the Cotton Futures Act."

8.

The said Circuit Court of Appeals erred in refusing to hold that the District Court erred in refusing to give request numbered three, found on page 44 of the printed record, which was in the following language:

"Under the Cotton Futures Act of Congress, no legal contract for the future delivery of cotton can be made except by putting said contract in writing. The contracts offered in testimony state on their face that they are made in compliance with the Cotton Futures Act of Congress, and the regulations of the New Orleans Cotton Exchange. The rules of the New Orleans Cotton Exchange permit oral contracts. The Act of Congress does not permit oral contracts of that kind. Hence under the Act of Congress, the contracts offered in evidence are invalid and cannot be the basis of a recovery in this action."

9.

The said Circuit Court of Appeals erred in refusing to hold that the District Court erred in refusing to give request numbered four, found on page 44 of the printed record, which was in the following language:

"It was the intention of Congress in passing the Cotton Futures Act of Congress to strike down and make illegal and void every contract for the future delivery of cotton, unless said contract was made in accordance with the terms of said Cotton Futures Act. Therefore, if the Internal Revenue of two cents per pound as provided by the Act of Congress, was not paid by the parties to the contract offered in testimony, and if the parties did not enter into the contract as provided by the said Act of Congress, then the entire transaction is illegal and void, and there can be no recovery in favor of the plaintiff. The Cotton Futures Act of Congress as to the tax provided as follows:

'That upon each contract of sale of any cotton for future delivery made at, on or in any exchange, board of trade or similar institution or place of business, there is hereby levied a tax in the nature of an excise of two cents for each pound of cotton involved in any such contract.'"

10.

The said Circuit Court of Appeals erred in refusing to hold that the District Court erred in refusing to give request numbered five, found on page 45 of the printed record, which was in the following language:

> "Section 4 of said Cotton Futures Act is as follows:
>
> 'Contracts of sale, form and contents. That each contract of sale of cotton for future delivery mentioned in section three of this act shall be in writing plainly stating or evidenced by written memorandum showing the terms of such contract, including the quantity of the cotton involved and the names and addresses of the seller and buyer in such contract, and shall be signed by the party to be charged, or by his legal agent in his behalf. If the contract or memorandum specify in bales the quantity of the cotton involved, without giving the weight, each bale shall, for the purpose of this act, be deemed to weigh five hundred pounds.'"

11.

The said Circuit Court of Appeals erred in refusing to hold that the District Court erred in refusing to give request numbered six, found on page 45 of the printed record, which was in the following language:

> "Under Section 5 of said Cotton Futures Act, it is provided that no tax shall be levied under the act on any contract of sale mentioned in Section 3, quoted above, if the contracts comply with each of the conditions named in Section 5. One of these conditions is that said contract must conform to the requirements of Section 4 and the rules and regulations made pursuant to that act. After the passage of said act, certain regulations were made by

the Treasury Department of the United States. Acting under the authority of said Act of Congress, the Treasury Department of the United States adopted the following regulations:

'No provision, by-law, rule or custom of any exchange, board of trade, or similar institution or place of business which is inconsistent or in conflict with any requirement or provision of the act to provide revenue to defray war expenses and for other purposes, approved October 3, 1917, or any regulations thereunder, nor any collateral, or additional agreement or understanding, either verbal or written, respecting the subject matter of such contract or the settlement or fulfillment thereof, which is inconsistent or in conflict with any requirement of said act or the regulations thereunder promulgated by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall exempt any person from the payment of the tax provided for under Section 807, Subdivision 5, of said act.'

"The jury are therefore instructed that if there is any provision by law, rule or custom of the New Orleans Cotton Exchange, which is inconsistent with or in conflict with any requirement or provision of the act of the Cotton Futures Act or if there is any additional agreement, understanding, either verbal, or written respecting the subject matter of said contract or the settlement or fulfillment thereof, which is in conflict with any requirement of said act, then and in that event the contracts offered in evidence would be illegal and void, and there can be no recovery. In that regard, if the provisions of the New Orleans Cotton Exchange Regulations and rules provide for verbal contracts or if they provide for settlements so as to prohibit the actual delivery of the cotton to the defendant if actual delivery was intended then said regulations would be in conflict with the Act of Congress, and

the rules of the Treasury Department and in that event said contracts would be invalid and no recovery could be had upon them."

12.

The said Circuit Court of Appeals erred in refusing to hold that the District Court erred in refusing to give request numbered seven, found on page 46 of the printed record, which was in the following language:

"If under the rules and regulations of the New Orleans Cotton Exchange the plaintiffs or the buyer or seller of cotton to or from the defendant had the right to prevent the defendant from actually receiving the cotton contracted for, or if under said regulations there was any impairment of the defendant's right to receive said cotton, then the contracts offered in testimony did not comply with the Cotton Futures Act and the Treasury Regulations thereunder, and if that be the fact, then the plaintiffs cannot recover."

13.

The said Circuit Court of Appeals erred in refusing to hold that the District Court erred in refusing to give request numbered eight, found on page 47 of the printed record, which was in the following language:

"If the defendant on the morning of February 1, 1917, sent to the plaintiffs a telegram, authorizing them to stop his losses on 1000 bales at 17.20 cents per pound and on 1000 bales at 17.15 cents per pound, and if there was a custom upon the New Orleans Cotton Exchange, authorizing the plaintiffs upon receipt of that telegram to sell defendant's cotton at 14 cents per pound, and if that custom was unknown to the defendant then such telegram would

not authorize the plaintiffs to sell out defendant's contracts for the future delivery of cotton, if they were valid and at the price of 14 cents per pound. If such are the facts, the sale made by the plaintiffs of 2000 bales of cotton at 14 cents was unauthorized by the defendant and in that event the plaintiff cannot recover."

14.

The said Circuit Court of Appeals erred in refusing to hold that the District Court erred in refusing to give request numbered nine, found on page 47 of the printed record, which was in the following language:

"If the contract was in the form required by the Cotton Futures Act, and if the contracts introduced in evidence were fair and presumptively lawful on their face, yet if there was no intention to deliver the cotton bought and sold or to receive the cotton bought and sold then the contract was illegal and there can be no recovery. A contract for the future delivery of cotton, although fair on its face is void, if the parties to the contract did not intend that there should be actual delivery. In other words, if the parties intended at the time of the making of the contract that said contract should be discharged by the payment of one party to the other of the difference between the contract price of the goods at the date fixed for their delivery or the termination of that contract or the market price of that contract, then said contract is what is known as a wager contract and in that event plaintiffs cannot recover. If the parties intended at the time of the asking of these contracts that there should be no actual delivery of cotton and that settlements should be made upon the difference between the contract price and the market price at the time that the contracts should be closed, then said contracts are

wagering contracts, and are against public policy and void, and no recovery can be had on any such contracts. If the parties intended to speculate without intending any delivery on the rise and fall in the price of cotton, then said contracts were void, and in that event there could be no recovery."

15.

The said Circuit Court of Appeals erred in refusing to hold that the District Court erred in refusing to give request numbered ten, found on page 48 of the printed record, which was in the following language:

"If either party to the contract, that is the defendant or the plaintiff, or if the defendant's vendee or vendor, did not intend under these contracts to deliver any cotton or to receive any cotton and if it was intended only to settle as above stated upon the rise and fall in price of cotton then the contracts were wagering contracts, and there can be no recovery in that event."

16.

The said Circuit Court of Appeals erred in refusing to hold that the District Court erred in refusing to give request numbered twelve, found on page 48 of the printed record, which was in the following language:

"In determining the question as to whether the contracts introduced in evidence are illegal and void as being wagering contracts the jury are entitled to take into consideration all the facts and circumstances in the case, including the usages and customs of cotton brokers on exchanges, and including the amount of cotton sold on the exchanges and the amount bought thereon and also the business of the defendant and his ability and capacity to take

and pay for the amount of cotton purchased. The question on that subject to be determined by the jury is as to whether it was intended by the plaintiffs and the defendant that there should be an actual delivery and receipt of the cotton. If no actual delivery was intended, then the plaintiffs cannot recover. This, if true, defeats the plaintiffs' recovery, although the contracts for the purchase and sale of the cotton may be in writing and may be in the usual form and in accordance with law. If it be true that the parties did not intend the actual delivery of the cotton, they cannot make their transactions valid by placing the same in the form of contracts which are fairly legal on their face. The jury have the right to consider all evidence introduced, including that outside of and beyond the contracts. They are not bound to find that an actual delivery was intended even if the contract so recites. If the evidence shows that no actual delivery was intended, then the contracts are void, although delivery may be provided for in the contracts and if they are void, then there can be no recovery."

17.

The said Circuit Court of Appeals erred in refusing to hold that the District Court erred in refusing to give request numbered fourteen found on page 49 of the printed record, which was in the following language:

"If the parties, the plaintiffs and the defendant, or the latter's vendors or vendees, at the time of entering into the transactions, did not intend to deliver any cotton on the contract, and if it was their intention not to deliver any cotton but to take profits or losses by the rise or fall in the price of cotton, then said contracts are void and if such are the facts, then even if the defendant agreed to pay the balance, such an agreement in that event would

not be binding and under those facts, the plaintiffs cannot recover on any agreement by defendant to pay, if he made such agreement."

18.

The said Circuit Court of Appeals erred in refusing to hold that the District Court erred in refusing to give request numbered fifteen, found on page 50 of the printed record, which was in the following language:

"Some reference has been made in the evidence to the question of hedging, it being contended that hedging was legal. On that question the court instructs the jury that if a holder of spot cotton in order to recoup his loss by a fall in the price of that cotton, sells futures without any intention on his part to deliver the cotton on the futures contract and if the futures contract is made without any intention to accept or deliver cotton thereon, but to take or make profit by the fall of the price in futures, then under those circumstances the said futures contract would be unlawful and void; and there could be no recovery in a case of that kind where the right of recovery is based upon the fall in the price of the futures."

## QUESTIONS INVOLVED.

The principal question involved is whether the dealings detailed above, pages 3 and 4, on the New Orleans Cotton Exchange complied with the United States Cotton Futures Act of Congress requiring said contracts to be in writing containing the names of buyer and seller, or whether said transactions were in violation of said Act of Congress. This question was raised by objections to testimony, by motion for a directed verdict, and by requests for instructions. In addition, there is involved the question of whether, upon the undisputed evidence, the transaction was a gambling transaction on account of which the respondents could not recover. There is also involved the question of whether an order from the principal to the broker, to sell cotton at 17.20c will authorize the broker to sell the cotton at 14c. There is also involved the important question of whether dealing in futures known as hedging, constitutes a gambling transaction. However, as stated, the principal question is whether the contracts were in writing containing names of buyer and seller as required by the Cotton Futures Act of Congress. From the specifications of errors above set forth, there necessarily arise the following questions to be determined by this court:

I.

Did the brokers' slips introduced in testimony and printed above, constitute written contracts between the "*buyer*" and the "*seller*," signed by the party to be charged, or by his agent *in his behalf* as required by the United States Cotton Futures Act?

II.

What is the meaning of the words "The party to be charged," in the Act of Congress.

III.

Did the brokers' slips and the transactions in cotton, as shown in the record, comply with the United States Treasury Regulations, or are such transactions in violation of the treasury regulations.

IV.

Are the contracts in futures offered in evidence, illegal under the Cotton Futures Act, as well as under the rules of the New Orleans Cotton Exchange?

V.

Upon the undisputed evidence, are the transactions gambling ventures in plain violation of the law, illegal, denying a recovery?

VI.

Under the Act of Congress, must the intention not to deliver in dealing in futures, exist in the brokers, or must it exist in the principals, or must it exist in only one broker, or one principal?

VII.

Is hedging, which admits no intention to deliver, a gambling venture?

The above are the questions discussed in the brief below.

IN THE

# Supreme Court of the United States

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**No.** .....

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FRED BROWNE, PETITIONER,

VS.

CHARLES B. THORN, W. D. MAGINNIS, SAMUEL C. COLEMAN AND MILES J. KEHOE, RESPONDENTS.

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## BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

**The brokers' slips offered in testimony fail to show a contract in compliance with the United States Cotton Futures Act.**

In the petition which is printed above, samples of the brokers' slips are given. *The name of Fred Browne does not appear on any of these. Under the rules of the New Orleans Cotton Exchange* (Tr. 227), *Fred Browne, the petitioner, cannot be a party to the purchase and sale of cotton on the New Orleans Cotton Exchange.*

The rules of the New Orleans Cotton Exchange are found in the record on page 124 and following. Section 1 of Rule I, prohibits the taking notice of any contract or the enforcement of the same by the Exchange, *unless both parties thereto shall be full members of the New Orleans Cotton Exchange.* Therefore, by said Rule I, the alleged brokers' slips, even if they are contracts, have absolutely no binding force upon Fred Browne, or any other outside person who buys and sells cotton futures on the New Orleans Cotton Exchange, through brokers or otherwise. By that rule, no contract on the New Orleans Cotton Exchange made between any person not a member thereof, has no validity, whatever. It cannot be possible that Congress intended to validate any such invalid contracts. It cannot be successfully asserted that Congress intended to encourage gambling in cotton futures. Such was not the purpose of the Cotton Futures Act. An examination of the Cotton Futures Act, will I think, demonstrate that the alleged brokers' slips and the undisputed evidence in this cause demonstrate that the transactions in controversy were in plain violation of the Cotton Futures Act.

The first Cotton Futures Act was passed by Congress on August 18th, 1914. See 4 Fed. Stat. Ann. (2nd Ed.) 277. That Act was held invalid by Judge Hough in *Hubbard* v. *Lowe*, 226 Fed. 135. In stating the purpose of that Act of Congress, Judge Hough said:

> "As in the case cited, the legislature decided to suppress the sale of colored oleomargarine, so here it desired to destroy every form of contract

for future delivery of cotton, except that marked out by the statute. In both instances the object was sought to be attained by a tax intended to be prohibitive; in both the statutes are by title called tax bills, and to both the same treatment must be accorded, viz: They are revenue bills, because Congress gives them that label and provides the machinery of levy and collection. It is immaterial what was the intent behind the statutes; it is enough that the tax was laid, and the probability or desirability of collecting any taxes is beside the issue."

So far as I have been able to ascertain, no court has ever dissented from that declaration of Judge Hough. It seems clear that the purpose of Congress was to destroy every form of contract for the future delivery of cotton, except that marked out by the Act of Congress. *Hence, if the dealings in question do not constitute a written contract, such as is required by the Act of Congress, it follows that said dealings were invalid, and hence there could be no recovery.* If the alleged transactions were invalid, then under Section 14 of the last Cotton Futures Act, anyone violating the Act is deemed guilty of a misdemeanor. Upon conviction he may be subjected to heavy fines, and even to imprisonment. Therefore, if the said contracts in controversy herein are in violation of said United States Cotton Futures Act, then the respondents are principals in the offense that was committed. The respondents were the brokers, in connection with other brokers making a deal between unknown principals. The brokers participated in the making of the contract. *Neither principal was named, or in any manner known in the contract* and by the plain lan-

guage of the rules of the New Orleans Cotton Exchange (Tr. 227), the said alleged written contract could not be enforced against Browne, the petitioner, nor any other outsider. We do not find in the correspondence between the petitioner and the respondents any authority for the respondents to sign the name of the principals to a contract. The United States Cotton Futures Act does not authorize a contract between *brokers* as agents of *unknown* principals. Congress had in mind the actual buyer and the actual seller, not the agent of such. Under Section 1 of Rule I (227) the respondents would not have the power to sign the name of a non-member of the exchange to any contract on the exchange, but the act of Congress requires the name of the principal to be signed. As respondents participated in the making of the contracts, and as they actually made them, they therefore aided and abetted in the making of illegal contracts, if they are illegal. Therefore, the respondents, if the contracts are illegal, would be guilty of a misdemeanor, and would be principals in an offense against the United States Government.

U. S. Penal Code, Sect. 332.
35 U. S. Statutes at Large, 1152.
6 Fed. Stat. Ann. p. 984 and cases there cited.

It therefore seems certain that Congress, with admitted plenary powers over the subject matter, has declared *every* contract illegal, if not in writing, and if not containing the requirements fixed by the United States Cotton Futures Act, and if not containing the names of

*buyer* and seller signed by them or by an agent *in their behalf*; hence in the name of the principal. Therefore, if the plaintiffs did not comply with that Act, they violated the law. If they violated the law, they cannot recover. If the offered brokers' slips are not contracts, within the meaning of the Act of Congress, then the plaintiffs violated the law, and in that event the Circuit Court of Appeals committed error in affirming the case.

Under Section 2 of the Cotton Futures Act the contract of sale is defined to include sales, agreements of sale, and agreements to sell. The act of each member of an association, a partnership or corporation, is the act of the association, partnership and corporation. The Act of Congress does not say that the act of the broker, who is a member of the exchange, is the act of the dealer, who is not a member of the exchange.

Section 3 of the Act of Congress, levies a tax in the nature of an excise of 2 cents for each pound of the cotton involved in any such contract.

Section 4 provides the form of the contracts of sale. The court will remember that in Section 2 Congress has defined the meaning of the words "contracts of sale." Section 4 requires each contract of sale *to be in writing*, plainly stating or evidenced by written memorandum showing the terms of said contract, including the quantity of the cotton involved *and the names and addresses of the seller and buyer in such contract*. The seller and the buyer are not the brokers who deal on the exchange. The seller is the one who sells in the future contract of sale. The buyer is the one who buys. It may be said, how-

ever, that the broker acts in his own name for an undisclosed principal. It may be said that the broker is the agent of the principal. It may be said that the broker has the right to make a trade for an undisclosed principal. In truth that was the very evil that Congress desired to strike down. Congress was desirous of breaking up the gambling in futures of cotton. Hence, Congress desired to make it necessary that the name and addresses of each *seller* and of each *buyer* appear in the contract. The name of Fred Browne did not appear in any of those contracts. There is no pretense that the principal, who was the buyer or seller in any one of those contracts, was ever known. There is no pretense that the name and address of the chief member in interest was ever disclosed in any contract entered into on the cotton exchange. The purpose of Congress was to get at the real party engaged in the transaction. The Act is a Revenue Act. It provides for a revenue to the Government. An irresponsible broker might make a sale on the cotton exchange and the Government might not be able to collect a cent of revenue from him. The man back of him, however, who put up the money is the seller or the buyer, as the case may be, and that man is ordinarily solvent. Congress had two purposes in view. One was to discourage gambling in futures and to prevent it as far as possible, and the other was to give the Government the valid claim against the actual seller or buyer of the cotton for the revenue tax, provided in the Act of Congress.

It is undoubtedly true that Browne dealt through Thorne & Maginnis. It is undoubtedly true that Browne

was the real buyer, if he was buying cotton at all, and he was the real seller if he was selling cotton, at all. It is undoubtedly true that he was one principal and the man from whom he *bought* or to whom he *sold*, was the other principal. Conceding that he might make a deal through his broker with an unknown principal, it does not follow that Congress intended to legalize that kind of a transaction, unless the written contract disclosed the names of the buyer and seller. The purpose of Congress was to prohibit, as far as possible, gambling in futures. Hence, Congress desired to have a public record of every person interested in a contract of sale of cotton for future delivery, and hence the names of the buyers and sellers must be in the contract.

It is not a compliance with the Act of Congress merely to give the names of the brokers who were buying and selling. That is not the language of the Act. Congress, in using the words "seller and buyer" used them with the ordinary accepted meaning. The seller is not the broker. The buyer is not the broker. The seller is the party who owns the product, and stands back of the broker. The buyer is the party who wants the product and stands back of the broker that represents the buyer. *Congress could have no purpose in requiring the name and address of a broker to be on the contract of writing.* The name and address of the broker without and before the Act of Congress were always written or appeared in the contract. The bought and sold slips of the brokers contained the name of the broker acting for the seller and the name of the broker acting for the buyer. *To say that Congress*

*intended to have the name and address of the broker in the contract, is to charge Congress with doing an absolutely useless thing. Congress knew that the names and addresses of the brokers were already on all contracts on the great cotton exchanges.* That fact is so well known that a court will take judicial knowledge of it. Hence, it cannot be said that the purpose of Congress was to require a thing which had always been done. It therefore follows that when Congress said that the names and addresses of the *sellers* and *buyers* should be written in the contract, or should be in the contract, Congress meant what it said, and that was that the name *principal* back of the broker should be in the contract. This is made clear by the fact that the contract must be signed by the *party to be charged, or by the agent in his behalf.* Hence, to comply with the Act of Congress the contracts in question must have been signed "Fred Browne by Thorn and Maginnis, agents." The brokers' slips offered in evidence are not signed by Fred Browne. They are not signed by Fred Browne by Thorn & Maginnis, "agent of Browne in his behalf." They are signed by Ellis & Company as principals, and they are signed by Thorn & Maginnis as principals. It nowhere appears on any of these contracts, that Browne, the party to be charged, signed any contract, nor does it appear that he signed it by an agent. The Cotton Futures Act, it must be clear, is broader and more far-reaching than the Statute of Frauds. The Statute of Frauds does not destroy oral contracts. It simply prohibits their enforcement for lack of testimony. Hence, the rule as to the Statute of Frauds relates to a rule of

evidence. The parties in a contract of that kind cannot enforce the contract because they have no legal evidence of the contract.

*Williams* v. *Robinson*, 73 Me., 186.

The error of the Circuit Court of Appeals, (257 Fed., 519), is based upon the erroneous reasoning that Congress was enacting a Statute of Frauds. Such is not the case. Congress was enacting a statute to destroy every form of contract for the future delivery of cotton, except that contract marked out by the statute. The opinion of the Court of Appeals also is based upon the erroneous theory that a contract signed by one party and accepted by the other is good. That principle has no application to this Cotton Futures Act. That principle does have an application as applied to the Statute of Frauds. However, in the State of Arkansas, in construing the Statute of Frauds, it was held that where one party signed a contract, and the other accepted it, said contract could not be enforced against the one accepting it.

*Lee* v. *Vaughn Seed Store*, 101 Ark., 69.

In that case the court refused to permit the buyer who had signed the contract and delivered it to the seller to enforce said contract against the seller, because the latter had not signed the contract. All this, however, is far afield as to the meaning of the Act of Congress. Congress was not enacting a Statute of Frauds. It was enacting a plain, clear statute for the purpose of preventing gambling in futures. An examination of practically all of the cases cited by the Court of Appeals demonstrates

that the Court of Appeals is reasoning by analogy from the decision on the subject of the Statute of Frauds, and therefore the court has mis-understood the broad, sweeping and clear meaning of the Act of Congress. Even under the Statute of Frauds a contract cannot be enforced against the party who has not signed it.

20 Cyc. p. *272*, Note 77.

It seems to be well settled that the party not signing the contract or memorandum obviously cannot be charged on the contract.

*Marx* v. *Bell*, 48 Ala., 497.
*Smith* v. *Jones*, 66 Ga., 338.
*Brown* v. *Snider*, 126 Mich., 198.
*Wilson* v. *Louiston, Mill Co.*, 150 N. Y., 314.
*Watson* v. *Winston* (Tex.), 43 S. W., 852.

The above construction of the Act of Congress is fully confirmed by a closer examination of the various provisions of said Act. Section 5 exempts from the tax a contract if the contract complies with Section 3 and also with certain conditions named in Section 5. The first condition is that it must conform to Section 4. *That is, it must have the names and addresses of the seller and the buyer, and must be signed by the party to be charged, which would mean Browne, and the man from whom he bought, or it must be signed by Browne by Thorn & Maginnis, his agents*, and it also must be in writing and the terms of the contract must be given, and the quantity of the cotton involved. It must also be made in pursuance to the treasury rules and regulations made under that Act. That subject is discussed below.

The Act of Congress, being a Revenue Act, has a stronger and further meaning. The purpose of it is to collect revenue in every case where the contract is not made in accordance with said act. In Section 2 of the Cotton Futures Act, it is provided "that the tax imposed by Section 3 of this Act shall be paid by the *seller* of the cotton involved in the contract of sale." This tax must be paid by means of stamps which shall be affixed to such contracts or to the memoranda, evidencing the same, and the stamps must be canceled in compliance with the rules and regulations which shall be prescribed by the Secretary of the Treasury. If it should be contended that this means that the sellers' slips offered in evidence should have affixed thereto the stamps, provided the contracts are not in compliance with Section 5 of the Cotton Futures Act (and for that reason it was intended that the contracts should comply with the Act of Congress when the seller only signed the contract), still as a matter of law the respondents, would fail for the reason that the names of the buyers and sellers are not in the alleged contracts at all.

I respectfully submit that the sound rule on the subject is found in the opinion of Judge Carland. On the principal question under discussion, he said:

> "Coming to the Cotton Futures Act, I may say that as the present action is not one to enforce the contracts for the purchase and sale of cotton, Section 12 of that act above quoted has no application. The serious question presented by the record is this: Laying aside the question of gambling, did the evidence offered show that the

plaintiffs knowingly engaged in an illegal business or transaction in the purchase and sale of the cotton? If so, plaintiffs cannot recover and the exclusion of the evidence was not error. *Irwin* v. *William*, 110 U. S. 499; *Bibb* v. *Allen*, 149 U. S. 481, *supra*; *In re Green*, 7 Biss. 338; *Metchert* v. *Tel. Co.*, 3 McCrary, 521; *Bartlett* v. *Smith*, 13 Fed. 263; *Raymond* v. *Leavett*, 46 Mich. 447; *Cobb* v. *Prell*, 15 Fed. 774; *Steers* v. *Lashley*, 6 T. R. 61; *Everingham* v. *Meighan*, 55 Wis. 354; *Farcira* v. *Gabell*, 89 Pa. St. 89; *North* v. *Phillips*, 89 Pa. St. 250; *Ruchizky* v. *DeHaven*, 97 Pa. St. 202; *Dickson* v. *Thomas*, 97 Pa. St. 278; *Sampson* v. *Shaw*, 101 Mass. 145; *Tenny* v. *Foote*, 95 Ill. 99; *Phelps* v. *Holderness*, 56 Ark. 300.

Whether the business was illegal depends upon the fact as to whether it was conducted in violation of the Cotton Futures Act, as Section 14 of that act, above quoted, makes it a crime punishable by fine and imprisonment for any person to violate any of its provisions. There is no pretense that the tax imposed by Section 3 was paid. Section 5, however, provides that the tax need not be paid on any contract of sale, if the contract comply with the conditions named in said section. Assuming that the memorandums offered in evidence constituted the contract mentioned in the Cotton Futures Act, it appears that they contain this endorsement: 'Subject to the United States Cotton Futures Act, Section 5.' Under the law, this incorporated into the contract all of the provisions of Section 5 except subdivisions first and second."

After disposing of the unimportant questions against the contentions of the petitioner, Judge Carland further stated:

"I am satisfied that if the memorandums offered could be held to be the contracts referred to in the Cotton Futures Act, then they comply substantially with the provisions of Section 5, but conceding they do comply with the provisions of Section 5, it still remains to be determined, are they evidence of a contract—are they, standing alone, evidence of a written contract. The difficult question in the case is, what did Congress mean by the following language found in Section 4: 'And shall be signed by the party to be charged, or by his agent in his behalf.' An instrument in writing not signed by both seller and buyer would not constitute a contract in writing. It is provided by Rule 47 of the New Orleans Cotton Exchange as follows:

'It shall be the duty of the seller, on the day on which transactions in contracts take place, or at not later than 9 a. m. on the following day, to furnish a contract or slip, and deliver his own already signed, and the opposite one in blank to the buyer; the latter shall then sign his contract or slip, and return it to the seller.'

Notice may be taken that this is the manner of doing business on the great exchanges of the country. Sometimes the instruments executed are called buyers' slips or sellers' slips, sometimes bought and sold notes. *Nicol* v. *Ames*, 173 U. S. 509.

The language used by Congress, above quoted, would seem to be unfortunate, as Congress could not make an instrument signed by one party only a contract.

Some courts, in deciding questions under the Statute of Frauds, have decided that a party to a contract which the law required to be in writing, who did not sign the same may enforce the contract against the party who did, and the language used by Congress might have come from this

> source, but as the language, if literally interpreted, would be meaningless, because both the seller and the buyer are to be charged in any contract for the purchase or sale of cotton, I think it must be held that the language means that any party to the contract who is to be charged thereby must sign it, either himself, or by his agent. Moreover this is not a suit to charge either party to the contracts of purchase and sale."

Judge Carland in conclusion, stated that in his opinion the brokers' slip offered in evidence did not comply with the Cotton Futures Act, and hence there could be no recovery. It seems to be the meaning of the Act of Congress that the words "the party to be charged," referred to each party to the contract, and to the actual buyer and actual seller. The phrase really has that meaning. Each *party*, so far as Congress is concerned, is to be charged. Each party would necessarily know whether he was signing a valid contract. Each party must know the law. Each is guilty of an offense if he fails to pay the tax and executes a contract contrary to the statute. The tax must be paid by the *seller*, but both buyer and seller may be violators of the law. Yet Congress expects to charge each *party* with criminal prosecution if the law was violated. I do not say that criminal prosecution is suggested in the phrase, "the party to be charged." I do say, however, that the phrase, "the party to be charged," is broad enough to include both the *buyer* and the *seller*, as both are to be charged if the contract is valid. The Act of Congress is a revenue act and the intention is that the contract must be signed *when made*

or else the tax must be paid. If the contract is not signed by *each*, the one signing cannot enforce it against the other, and hence it would not be a contract. It would, therefore, be invalid, because no tax was paid. It may be that under the weight of authority in construing *the statute of frauds* the words "the party to be charged" refer to the party against whom the contract is sought to be enforced, provided that party has signed the contract. In all the authorities it seems to be well settled that the party who accepts the contract signed by the other party may enforce it, accepting and acting on it, taking the place of his signature. On the other hand, the party who has signed it cannot enforce it against the party who has not signed it. (See the cases above cited.) In this Cotton Futures Act, unless each party signs, *as a party to be charged* the contract would be illegal as to one. It could not be enforced against the one who did not sign it. Therefore, it could not be a complete contract in writing plainly stating and showing the terms thereof. Congress did not say that a contract was desired which was signed only by one party. It must be signed by the party to be charged, which under the circumstances means both parties. Congress desired the names of the parties to these contracts to be signed to the contracts, so that the names could be a matter of record. Hence Congress required the *vendor* as well as the *vendee* to sign these contracts. To comply with the law, as well as the rules of the Cotton Exchange, the seller must sign the sold slips and the buyer must sign the bought slips. This is the construction placed upon

these transactions by the manager of the New Orleans Cotton Exchange. (See Rule 47 on page 27 of the record.) It is made the duty of the seller to furnish a contract or slip and deliver his own already signed and the buyer shall then sign his contract or slip and return it to the seller. The Act of Congress was passed to require the names of the real parties to be signed, and not the mere agent. The name may be signed by the agent, but he must sign his principal's name. The form of this slip is provided in the rules of said Cotton Exchange. (See pages 27 and 28.) The respondents allege in their complaint that they made the sale in compliance with the rules of the New Orleans Cotton Exchange, and the United States Cotton Futures Act. It was, therefore, incumbent upon them to prove both allegations by legally admissible evidence of contracts in writing, signed by the buyer and seller, by the broker or agent. *That proof could not be made by parol.* They could not legally show that Browne's name was *intended to be there.*

Again, in Section 4 of rule one (see Tr. p. 15), there appears the requirement that the seller must deliver the contract to the buyer. Under Section 1 of Rule 2, every order given to a member of the New Orleans Cotton Exchange to buy or sell a contract for the future delivery of cotton shall be understood to be in accordance with the by-laws and rules of the Cotton Exchange, and subject to the Cotton Futures Act. Therefore, if the petitioner, Browne, gave the order as plaintiffs say he did, he gave it upon condition that *the two parts of this one contract should be signed respectively*

*by the buyer and the seller,* either by him or by him by his agent, and should be delivered each to the other in accordance with the requirements of the Cotton Exchange, and the Cotton Futures Act. Otherwise, petitioner would have no cause of action against the *seller* of the cotton and no cause of action against the buyer of the cotton.

II.

**The meaning of the words "the party to be charged" in the Act of Congress.**

As before stated, Section 4 requires that the contract "shall be in writing, plainly stating, or evidenced by a written memorandum, showing the terms of such contract, including the quantity of cotton involved, and the names and addresses of the seller and buyer in such contract, and shall be signed by the party to be charged, or by his agent *in his behalf.*" Hence agent cannot sign as principal.

Counsel for the plaintiffs in the court below seem to contend that the Act of Congress is complied with by a signature of either the buyer or the seller, in the name of the broker without disclosing the principal. In that contention they overlook the fact that this Act of Congress is a revenue act. Hence, the decisions of the various courts of this country and of England, as to the meaning of the words "the party to be charged" are not applicable. In 29 Am. & Eng. E. of L., p. 858, it is said that the weight of authority on the construction of the statute of frauds is that the statute is satisfied if the

memorandum be signed by the party sought to be charged. The authorities are divided on that proposition. The reasoning which led some of the courts to hold that the memorandum was sufficient, if signed by the party against whom the suit was brought, was that the other party who brought the suit, and who had not signed the memorandum, accepted the memorandum, and acted on it, and therefore the party bringing the suit, although he had not signed the memorandum, had a right to maintain the action. See the cases cited. See Brown on Statute of Frauds, Section 244, and cases cited in 29 Am. & Eng. E. of L., p. 858, but the party not signing could not be charged.

The Supreme Court of Arkansas took that view in case of *Lee* v. *Vaughan Seed Store*, 101 Ark. 68. See Brown on Statute of Frauds, Section 365.

In these cases where the vendor or the vendee has signed a memorandum, and the other party brings suit against the party that has signed the memorandum, the courts have upheld the memorandum on the ground that it was signed by the party to be charged. In other words, the court held that where a memorandum duly contains all of the terms and complies with the statute of frauds, and is signed by one of the parties, the other party may enforce said contract against the party that has signed it. That reasoning does not apply to this Revenue Act of Congress. Hence, the party to be charged, under the Act of Congress, means *both parties*, not their brokers or agents. If it is not signed by both *parties*, the tax must be paid. The controlling reason is that Congress

has declared that the contract must be signed by the *party* to be charged. Congress intended that the *buyer* should be charged, and that the *seller* should be charged.

The United States Government does not become a party to enforce the contract. A contract cannot rest in a suspended state until one party or the other seeks to enforce it. The requirement of Congress is that it must be signed by each *party in writing*, so that it may be enforced by either party, and if that is not done, then the *parties* must pay a tax. The meaning is evident that the contract must be in writing and must be signed by each *party*, so that either party may enforce it, or else it will be a verbal contract, in violation of the law.

As before urged, the members of the cotton exchange, by their conduct, admitted that such is the meaning of the Act of Congress. Hence, the rules require the signing of the bought and sold notes, provided for in Rule 47, and discussed above. There also exists a grave question as to whether these bought and sold notes comply with the Act of Congress, in that there is nothing in one to show that it is connected with the other. It would appear that this is another fatal defect, for the additional reason that oral testimony cannot be admitted to show that these bought and sold notes constitute the separate parts of a single contract. I have heretofore discussed the matter as though that question did not arise. It, however, does arise, and is another ground upon which the action of the court at the first trial in excluding the contracts may be sustained.

In *Smith* v. *Jones*, (Ga.) 42 Am. Rep. 72, quoting from page 74, the Supreme Court of Georgia said:

> "It does not refer to the receipt at all; nor does it otherwise describe the thing bought, nor the price, nor any of the terms of the contract. There is therefore nothing in writing signed by her which complies with the statute so as to bind her, and taking the two papers together, unless the parol testimony be let in to connect them and show that the letter referred to the receipt, there is nothing signed by her to bind her to the contract set out in the receipt. If the parol testimony could show that, away would go the statute, and it might as well be admitted to show the whole contract. And such we understand to be the full current of authority, whether cited by the one or the other side here. Browne Stat. Frauds, Sec. 344, *et seq.*, and cases cited."

In *McIlroy* v. *Seery*, 48 Am. Rep. 110, quoting from page 111, the court said:

> "It is essential therefore that the written memorandum should show *who are the contracting persons*. Not only who is the person to be charged, but also who is the person in whose favor he is charged, for it takes two to make a bargain."

It is therefore respectfully submitted that the Act of Congress means that the contract must be signed by both the *buyer* and the *seller*, and if the contract is in two parts, there must be something in each writing to show that the two constitute a single contract.

III.

**Under the Treasury regulations, the offered contracts do not comply with Section 5 of the Act of Congress.**

Respondents in the court below conceded that the courts will take judicial notice of the method of doing business on the great future exchanges of the country. That point is also conceded in the opinion of the court. The point is ruled on in this court in the case of *Nicol v. Ames*, 173 U. S. 509.

The contract offered in evidence does not attempt to comply with any section of the Act of Congress, except Section 5. Counsel for the respondents rely upon the treasury regulations. Assuming that the court will take judicial knowledge of the regulations of the treasury department, it is clear that the contracts offered in evidence were properly excluded at the first trial, because said alleged contracts are in conflict with the regulations of the treasury department, and hence do not comply with the conditions of Section 5. *No contract that refers to any rule or regulation of the exchange, which is inconsistent with the Act of Congress, can be deemed in compliance with Section 5 of said act.* This is made clear by Article 5 on page 10 of the Treasury Regulations No. 36, which said Article 5 is as follows:

> "Art. 5. No contract shall be deemed to comply with the conditions of Section 5, Section 6A, or Section 10 of the United States Cotton Futures Act so as to exempt it from taxation if it contain or incorporate therein by reference or otherwise

> any provision or any by-law, rule or custom of any exchange, board of trade, or similar institution or place of business, which is inconsistent or in conflict with any requirement of Section 5, Section 6A, or Section 10 of the said act, as the case may be, nor if the parties enter into any collateral or additional agreement or understanding, either verbal or written, respecting the subject-matter of such contract which is inconsistent or in conflict with any requirement of said section."

The substance of that provision is that the contract must not include in it by any reference or in any other manner, any rule or custom of any exchange which is inconsistent or in conflict with the requirements of Section 5 of said Cotton Futures Act. The said alleged contracts which are shown on pages 69 to 74, inclusive, refer to the by-laws, rules and conditions of the New Orleans Cotton Exchange. They therefore make each and every one of the rules, by-laws and regulations of the New Orleans Cotton Exchange a part of that contract. If that were not so, what is the purpose in referring in said alleged contracts to the by-laws, rules and conditions of the New Orleans Cotton Exchange? Will counsel say that the contracts are not made in accordance with the New Orleans Cotton Exchange? Certainly not. Will counsel say that these contracts necessarily include and make a part thereof each of the rules, by-laws and conditions of the New Orleans Cotton Exchange? Such was their contention, as I understand them. In other words, they contend that these contracts are in accord with the by-laws, rules and conditions of the New Orleans Cotton Exchange, and that the rules are

made a part of the contracts. Hence if the rules have anything in them contrary to the Cotton Futures Act, said contracts would not be in accord with Section 5 of said act, and hence inadmissible. The act requires the contracts to be in writing, but the rules permit verbal contracts.

Section 3 of Rule I (15) of said rules is as follows:

> "Sec. 3. Verbal contracts (which shall always be presumed to have been made in the form herein prescribed), shall have the same standing, force and effect as written ones (if notice in writing conforming to the requirements of Section 4 of the United States Cotton Futures Act), if such contract shall have been given by one of the parties thereto to the other party during the day on which such contract was made or the next business day thereafter."

It is therefore perfectly clear that the New Orleans Cotton Exchange expressly authorizes verbal contracts for the sale and purchase of cotton futures. As plainly as language can make it, that is in direct violation of Section 4 of the Cotton Futures Act. Said Section 4 requires the contract to be in writing. Section 3 of Rule I of the New Orleans Cotton Exchange authorizes the contract to be made verbally. Hence, the two are in square conflict with each other.

The regulations, being Article V on page 10 of Regulations No. 36, above set forth, were adopted by the treasury department, for the express purpose of preventing any such provisions as exist in said Section 3 of Rule I above quoted. Therefore, Section 3 of Rule

I is incorporated in said contract, and is in direct conflict with Section 5 of the Cotton Futures Act, and therefore, according to these regulations, these alleged contracts cannot be deemed to comply with the conditions of Section 5, as a matter of law. Therefore the court at the first trial was right in excluding said contracts.

Another important reason should be considered in this connection. Article 6 of the Treasury Regulations above referred to says:

> "Any such provision, by-law, rule, custom, agreement, or understanding which in any manner takes away or impairs the right of the person obligated to deliver cotton, to tender any cotton which is of or within the grades, of the quality, and of the length of staple deliverable under a contract made in compliance with Section 5, Section 6A, or Section 10 of said act * * * shall be deemed inconsistent and in conflict with the requirements of said sections, as the case may be."

*It seems to be the purpose of the Act of Congress as emphasized in this regulation just quoted that the purchaser of cotton has the absolute right to receive the actual cotton.* This right is denied by certain rules of the New Orleans Cotton Exchange. Section 2 of Rule 26 (Tr. p. 24) is as follows:

> "Section 2. Any member who may find that he holds for account of various constituents, contracts, both of sale and purchase, in same month which offset each other, shall be authorized to offset and settle such contracts and to substitute therefor other names than those to or from whom he originally sold or purchased; provided, that in such cases

> he shall be deemed guarantor to his principals for the strict fulfillment of such contracts, and shall be liable to them for all damage or loss they may sustain by reason of such substitution."

*This rule and the treasury regulation above quoted are in conflict.* That being true, Article 5 of the Treasury Regulations makes it impossible to say that the brokers' slips are in compliance with Section 5 of the Cotton Futures Act.

Section 1 of Rule 50 is likewise in violation of the treasury regulations and of the Act of Congress. (See page 284 of the Transcript.) That rule authorizes any party holding a contract against another to close or cancel both by giving notice in writing. These two rules deprive the petitioner of any right to secure a delivery of the cotton purchased by him on the exchange. This is in violation of the Cotton Futures Act, and hence the tendered slips having incorporated in them these rules and regulations, are in violation of said Cotton Futures Act. In addition to that the "ring" settlements provided for in Section 2 of Rule 50 (Tr. 284) result in a similar denial of the petitioner's right to have the actual cotton. See Section 2 of Rule 50 as amended on page 30 and page 284 of the Transcript.

The court's attention is directed to the fact that these ring settlements are not made at the prices in the contracts or brokers' slips. They are made at the prices announced by the superintendent of the exchange at 12:30 p. m. on the date on which the "ring" is made. These regulations are in conflict with the Cotton Futures

Act, and also in conflict with the treasury regulations, and hence make the contracts offered in testimony illegal and void, thereby precluding a recovery by the respondents. These facts show that there was no intention to deliver actual cotton. Hence the transaction is illegal and void.

*Pate* v. *Wilson Bros. Mercantile Co.* (Tex.), 208 S. W. 235.

IV.

**The offered contracts or alleged contracts are illegal under the Cotton Futures Act as well as under the rules of the New Orleans Cotton Exchange.**

The petitioner especially relies upon Sections 3, 4, 5, 11, 12 and 14 of the said Cotton Futures Act for the purpose of showing that the facts in the case at bar establish as a matter of law the illegality of the offered contracts. These sections are as follows:

> "Sec. 3. (*Tax on Contracts for Future Delivery.*) That upon each contract of sale of any cotton for future delivery made at, on or in any exchange, board of trade, or similar institution or place of business, there is hereby levied a tax in the nature of an excise of 2 cents for each pound of the cotton involved in any such contract.
>
> Sec. 4. (*Contracts of Sale—Form and Contents.*) That each contract of sale of cotton for future delivery mentioned in section three of the Act shall be in writing plainly stating, or evidenced by written memorandum showing, the terms of such contract, including the quantity of the cotton involved and the names and addresses of the seller and buyer in such contract, and shall be signed by the

party to be charged, or by his agent in his behalf. If the contract or memorandum specify in bales the quantity of the cotton involved, without giving the weight, each bale shall, for the purposes of this act, be deemed to weigh five hundred pounds.

Sec. 5. (Contracts When Exempt From Tax.) That no tax shall be levied under this Act on any contract of sale mentioned in section three hereof if the contract comply with each of the following conditions:

First. Conform to the requirements of section four of, and the rules and regulations made pursuant to, this Act.

Second. Specify the basis grade for the cotton involved in the contract, which shall be one of the grades for which standards are established by the Secretary of Agriculture, except grades prohibited from being delivered on a contract made under this section by the fifth subdivision of this section, the price per pound at which the cotton of such basis grade is contracted to be bought or sold, the date when the purchase or sale was made, and the month or months in which the contract is to be fulfilled, or settled: Provided, that middling shall be deemed the basis grade incorporated into the contract if no other basis grade be specified either in the contract or in the memorandum evidencing the same.

Third. Provide that the cotton dealt with therein or delivered thereunder shall be of or within the grades for which standards are established by the Secretary of Agriculture except grades prohibited from being delivered on a contract made under this section by the fifth subdivision of this section and no other grade or grades.

Fourth. Provide that in case cotton of grade other than the basis grade be tendered or delivered in settlement of such contract, the differences above or below the contract price which the receiver shall

pay for such grades other than the basis grade shall be the actual commercial differences, determined as herein provided.

Fifth. Provide that cotton that, because of the presence of extraneous matter of any character or irregularities or defects, it reduced in value below that of 'good ordinary,' or cotton that is below the grade of 'good ordinary,' or if tinged, cotton that is below the grade of 'low middling,' or, if stained, cotton that is below the grade of 'middling,' the grades mentioned being of the official cotton standards of the United States, or cotton that is less than seven-eighths of an inch in length or staple, or cotton of perished staple or of immature staple, or cotton that is 'gin cut' or 'packed' or 'water packed,' shall not be delivered on, under, or in settlement of such contract.

Sec. 11. (Payment of Tax-Stamps.) That the tax imposed by section three of this Act shall be paid by the seller of the cotton involved in the contract of sale, by means of stamps which shall be affixed to such contracts, or to the memoranda evidencing the same, and canceled in compliance with rules and regulations which shall be prescribed by the Secretary of the Treasury.

Sec. 12. (Unenforceable Contracts.) That no contract of sale of cotton for future delivery mentioned in section three of this Act which does not conform to the requirements of section four hereof and has not the necessary stamps affixed thereto as required by section eleven hereof shall be enforceable in any court of the United States by, or on behalf of, any party to such contract of his privies.

Sec. 14. (Penalties For Violation of Act.) That any person liable to the payment of any tax imposed by this Act who fails to pay, or evades or attempts to evade the payment of such tax, and any person who otherwise violates any provision of

this Act, or any rule or regulation made in pursuance hereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than $100 nor more than $20,000 in the discretion of the court; and, in case of natural persons, may, in addition, be punished by imprisonment for not less than sixty days nor more than three years, in the discretion of the court."

In the construction of these sections, of course, it is necessary to consider all of the sections of the Cotton Futures Act. These are found in 39 U. S. Stat. at Large, 476. It is not pretended in the case at bar that the revenue of two cents per pound was paid on these contracts. In addition to what has been said above with reference to the insufficiency of the brokers' slip, I wish to call the court's attention further to Section 4 above set out. Each contract of sale (meaning each sale, each agreement of sale and each agreement to sell) must be in writing. In Section 4, Congress seems to have had in mind a written contract covering a sale, an agreement of sale, and an agreement to sell, and also a written memorandum. Section 4 is in the alternative. The contract must be in writing "or evidenced by written memorandum." Therefore, it is plain that Congress intended that the contract or written memorandum should be signed by both *parties* and not by the agents or brokers only unless in the name of the principal by the agent or broker. If it is not signed by both *parties* it is not an enforceable contract against each. The prime purpose of Congress was to have an enforcible contract against each *principal*.

The United States Government is not an interested party as to whether one party may sign and the other accept, giving the right to the latter to enforce against the former, but giving the former no right to enforce against the latter. These suggestions under this paragraph as to the account are made merely as an introductory to further suggestions on the requirements of the rules of the New Orleans Cotton Exchange and the regulations of the Treasury Department. It seems to be the meaning of rule one (see page *227* of the Tr.) that both *parties* must sign the contracts. Section one of rule one condemns all contracts "unless both parties thereto shall be *full members* of the New Orleans Cotton Exchange." It seems to be the meaning of that rule that both *parties* must, therefore, sign the contracts. Evidently Congress had knowledge of that rule when it passed the Cotton Futures Act. Hence the Cotton Futures Act was passed with the knowledge that both parties to the contract of sale must sign said contract. The form of the contract is provided in Section *2* of Rule 1. There is no pretense by the respondents in the case at bar that they complied with that form of contract. That form (*227*) is as follows:

"Contract.

New Orleans,.....,19...

In consideration of one dollar in hand paid, receipt of which is hereby acknowledged, ....., of the city of New Orleans, State of Louisiana, have this day sold to (or bought from).....of the city of New Orleans, State of Louisiana, 50,000 pounds, in about 100 square bales of cotton, growth

of the United States, deliverable from approved storage places for cotton in the Port of New Orleans, between the first and last days of..... next, inclusive, excepting holidays as provided in Rule 40 of the Rules of the New Orleans Cotton Exchange for the transaction of the Future Contract business.

The delivery within such time to be at seller's option, in not more than two days approved storage places, upon five business days' notice to the buyer, as provided by the Rules of the New Orleans Cotton Exchange.

The cotton to be dealt with herein or delivered hereunder shall be of, or within, the grades for which standards are established by the Secretary of Agriculture, except cotton prohibited from being delivered on a contract by the fifth subdivision of Section 5 of the United States Cotton Futures Act, and no other grade or grades (subject to the United States Cotton Futures Act, Section 5, and subject to New Orleans Cotton Exchange inspection and classification) at the price of.....cents per pound for middling.

In case cotton of grade other than the basis grade should be delivered or tendered in settlement of this contract, the differences above or below the contract price which the receiver shall pay for such grades, other than the basis grade, shall be the actual commercial differences determined as provided in Section 6, of the United States Cotton Futures Act.

Either party shall have the right to call for a margin as the variations of the market for like deliveries may warrant and which margin shall be kept good.

This contract is made in view of, and in all respects subject to, the United States Cotton Futures Act, Section 5, and to the By-laws, Rules and conditions, not in conflict therewith, established by the New Orleans Cotton Exchange.

(Signed).....”

It will be observed that it is expressly provided in this contract that it is made subject to the United States Cotton Futures Act, Section 5, and the by-laws, rules and conditions of the New Orleans Cotton Exchange. It may be contended, however, that the Act of Congress provides for a memorandum of the agreement, but there seems to be a grave question as to whether the brokers' slips may be considered or taken for the memorandum required under Section 4. It seems reasonable to say that the written memorandum required by Section 4 is more formal than the brokers' slip which is used. In addition to that Section 2 of Rule 1 above quoted, expressly requires that the contract for the purchase and sale under the Cotton Futures Act shall be in the form required. Section 3 of Rule 1 authorizes verbal contracts. These verbal contracts are to be evidenced by brokers' slips. Brokers' slips, however, are not formal contracts, within the meaning of Section 4. Section 4 of the Cotton Futures Act seems to require the memorandum to be made at the time of the sale or at the time of the agreement of sale or at the time of the agreement to sell. Section 3 of Rule 1 (227) permits a verbal contract at that time and then authorizes notice in writing of said contract. Hence that rule does not require the terms of the contract to be in writing. A *notice* is not a contract.

In addition Section 4 of Rule 1 (229) provides that the parties to the *verbal* contract may execute their brokers' slips on the next day. The Act of Congress does not seem to give that power. Rule 2 (229) of the Cotton Exchange, directs that every order given by a

customer of a broker shall be given with the understanding that the order shall be executed in accordance with the rules and by-laws of the exchange and of the United States Cotton Futures Act. It would seem to be the purpose of the Cotton Futures Act to require a plain written contract signed by both *parties* and yet the rules permit an oral contract and brokers' slips and also permit ring settlements and other settlements other than the actual delivery of the cotton. It does not seem to me that the brokers' slips referred to in the Cotton Exchange rules mean the same thing as the written memorandum required in Section 4 of the Cotton Futures Act. In addition to the ring settlement the rules (20 and 21) permit settlements by transferring notices from purchaser to buyer and buyer to purchaser, thus off-setting one trade against another, resulting in fulfilling or completing all contracts without any delivery of any cotton whatever. This seems to be in contravention of the intention of Congress. Rule 47 (274) expressly provides the form of the slip. In addition to that Rule 47 seems to require the contract to be signed by both *parties*, the same as Section 1 of Rule 1. Under Rule 47, all slips or contracts must be signed by the members themselves or the firm. That necessarily means that there must be one slip which has all the elements of a valid contract or there must be one contract signed by both parties, and if that is not its meaning, then it necessarily follows that there is no contract even under the rules. This confirms the argument heretofore made that the bought and sold slips are necessary to complete the contract *and that they must contain the names of the*

*principals.* It is my view that the question is a grave one, as to whether these slips amount to contracts. Even if they do they must be signed by both parties or else there must be separate ones, each being a part of the whole, one being signed by the buyer and the other being signed by the seller *and connected with some writing, because if the connection rests in parol the whole contract is not in writing.* There is no writing connecting the bought and sold notes and hence no contract in writing.

V.

**From the undisputed evidence, the contract was a gambling venture, said evidence showing that there was no intention to receive or deliver cotton involved in the purchase or sale.**

When this case was before the court below, the first time defendant had not testified, and there was not introduced the letters and telegrams showing the nature of the transaction. It was urged before the Court of Appeals on the first appeal (257 Fed. 519), that on the pleading and the evidence, as it then stood, it was a gambling venture, and therefore the judgment should be affirmed, even though the court below should have been wrong in excluding the testimony. This court denied that contention, and stated that the plaintiffs were entitled to go before a jury on their evidence. The cause was remanded, and was tried, and the plaintiffs did go before the jury on their evidence, and the point now is made by the defendant, that the evidence was insufficient to take the case to a jury, because the plaintiffs' evidence shows that

the transaction was a gambling venture. It is unnecessary to cite authorities to this court on the point that if the plaintiff, by his testimony wholly fails to make out a cause of action, then it is the duty of the court to direct a verdict for the defendant.

The undisputed evidence shows a gambling venture.

*King* v. *Johnson* (Calif.), 157 Pac., 531.

Regardless of whether the law of the United States—the Cotton Futures Act, was violated, and regardless of whether the plaintiffs were guilty of a violation of that law, it is submitted that the undisputed evidence shows that the transaction was a gambling venture. If so, it was illegal. The courts will not lend their aid to a recovery based upon losses arising out of gambling transactions.

*Irwin* v. *Williar*, 110 U. S., 499.
*Emery* v. *Jenison*, 131 U. S., 336.
*Bibb* v. *Allen*, 149 U. S. 481.
*Cleage* v. *Laidley*, 149 Fed., 346.
*Medlin Milling Co.* v. *Moffett Commission Co.*, 218 Fed., 686.

It was certainly not the intention of Congress to validate gambling in futures on the cotton exchanges nor to encourage it in any way. Where the understood purpose of transactions on the board of trade is to win or lose money on the fluctuations of the market, and not to deliver or receive the commodity, the transactions are illegal.

*Bardridge* v. *Cutler* (Ill.), 48 N. E., 125.
*Arthwine Natchette Investment Co.* v. *McFarlan* (Kan.), 144 Pac. 482.

In that case the court used the following language:

"It requires too great a strain upon the credulity of courts, to say that they must presume that the parties intended make an actual sale and delivery of grain."

In the same case the court further said:

"And when the plaintiff in error or its agent aided him (defendant) in the transaction and helped him to carry out the transaction in this illegal way, it is idle to say that the plaintiff in error did not know what the intention of Cruse was."

See:

*Wearc Com. Co.* v. *People*, 209 Ill., 528.
*Jamieson* v. *Wallace*, 167 Ill., 388.
*Stafford Co. Grain Co.* v. *R. M. & E. Co.* (Kan.), 146 Pac. 1139.

In that case the court said:

"It will not do to attach too much weight or importance to the mere form of the instrument, for it is quite certain that parties will be astute in concealing their intention and the real nature of the transaction, if it be illegal. It may safely be assumed that parties will make such contracts valid in form; but courts must not be deceived by what appears on the face of the agreement."

See also *Bernard* v. *Backhous*, 52 Wis., 593.

In those cases it is said that courts scrutinize closely the transactions made by those who deal in futures, and look beyond and behind the mere form of the agreement, and at the circumstances connected with it.

*E. O. Standard Milling Co.* v. *Flower* (La.), 15 So., 16.
*Connor* v. *Robertson* (La.), 55 Am. Rep., 521.
*Williamson* v. *Majors* (5th Cir.), 169 Fed., 754.

That case was similar to the one at bar, being a transaction in cotton futures. In that case, the court called attention to the fact that under the rules of the New Orleans Cotton Exchange, the actual delivery could be exacted by the members of the exchange as between each other, but the court did not find that the customer could demand and secure actual delivery in the courts. The court in that case, cited the following:

*Bibb* v. *Allen*, 149 U. S., 481.
*Board of Trade of the City of Chicago* v. *Christie Grain Co.*, 198 U. S., 236.

See:

*Waldron* v. *Johnson*, 86 Fed., 757.
*James* v. *Clement*, 223 Fed., 385.

I have cited the above cases, not because they are all in point, but because they discuss the question, and from that the rule is deduced that if the transaction is shown by all the evidence to be a gambling one, a recovery will be denied.

*Carpenter* v. *Beal-McDonald & Co.*, 222 Fed., 453, and cases there cited.

The following cases under similar facts, held the transaction a gambling venture:

*Wolf* v. *Andres* (Tex.), 196 S. W., 266.
*Kirkpatrich* v. *Richter* (Ga.), 91 S. E. 51.
*Orbis Bros.* v. *Holt-Morgan Mills* (N. C.), 91 S. E. 948.
*Cohn* v. *Brinson* (Miss.), 73 So., 59.
*Harnett* v. *Wilson* (Calif. App.), 161 Pac., 281.

With these principles in view, I desire briefly to call the attention of this court to the evidence, which shows as a matter of law, as I view it, that the transaction was a gambling transaction.

The petitioner never owned any sufficient quantity of cotton that would authorize him to make what are called hedging contracts. He had a farm or two, out near Crowder, Oklahoma, and had a one-fourth interest in about eighty bales of cotton. He therefore had, at one time no more than twenty bales of cotton. The undisputed evidence in this case shows that he purchased from the respondents, cotton futures amounting to 27,700 bales. Each bale weighed about 500 pounds. Therefore, the petitioner, between October, 1916, and February, 1917, purchased 13,850,000 pounds of cotton. He also sold the same amount. He was not a cotton manufacturer. He was reported in the trade journals as a merchant It requires a great strain on the credulity of human nature to say that the plaintiffs could expect the defendant to receive that amount of cotton in the space of four months. He was not manufacturing cotton. He was not a spinner nor an exporter. His own evidence shows that he had no thought of receiving any cotton bought, or of delivering any cotton sold; but we are to test the soundness of this contention by respondents' evidence. Respondents' evidence is that they sold from somebody unknown and whose intention is not shown, to the petitioner 27,700 bales of cotton in a period of four months. That cotton would average about $85.00 a bale. Therefore according to the respondents' evidence, they purchased for the

petitioner, to be "delivered" to him by some unknown party in the period of four months, cotton of the value of $2,354,500.00; and then some unknown party bought from respondents cotton worth $2,354,500, and yet respondents' right to recover fails if there was no intention to deliver. To say that it was the intention to deliver that cotton, is to say an unbelievable thing. It does not satisfy the law or the legal conscience to say under one's breath, "he gambled but he must pay his losses." The intention to deliver cannot be made up of the moral feeling that one who gambles should pay his losses. Public policy in justice to all requires the suppression of gambling. Hence the law leaves the gamblers as they are found. To say that there was no intention to deliver or receive any cotton, is to call a spade a spade. The wrongs done by cotton exchanges are not in question. What is the real truth in this case? Was that a gambling transaction, or was it a *bona fide* intention to buy and deliver cotton? The exact date when this cotton was bought and sold is shown on page 6, in the itemized bill. The undisputed evidence of the respondents shows that the defendant often bought "cotton," and included in the very order, a direct to sell at a certain loss. He sold cotton the same day. It was undisputed from both respondent and petitioner, that innumerable sales and purchases were made conditioned that the loss on the purchase or sale be stopped at a certain figure. That of itself, is conclusive evidence of the nature of the transaction. It is gambling on the rise and fall in price. For a court to permit itself to approve that sort of a trans-

action upon the theory that actual delivery is intended, is to permit something to be taken as true, the truth of which everybody knows is to the contrary. The sooner the courts speak out plainly on these gambling transactions, and call a spade a spade, the better will it be for the commercial, financial and industrial institutions of the country. The purpose of the United States Cotton Futures Act was to prevent gambling, and not to encourage it.

According to the evidence, respondents were leading members of the New Orleans Cotton Exchange, yet so far as their examination shows, not one of them was able to tell how many bales of cotton were bought and sold on that exchange in a single day. The undisputed evidence shows that the respondents did not know the petitioner personally. They attempted to claim that they had had him looked up in the commercial agencies, but when pressed on that, they were unable to give details. They did admit that they purchased and sold cotton for his account on the faith of the margins which they had in their hands. The business is referred to as a "*marginal*" business. Respondents themselves proved that. Innumerable notices of that nature were mailed by the respondents to the petitioner. The first letter written by respondents to the petitioner is dated September 22, 1916. Apparently that was the first transaction. It was the acknowledgment of an order "to sell 200 May." The very language of this letter has but one meaning. It is that an account for dealing in futures on the rise and fall of the price of cotton has been opened on the books of the respondents in the name of the defendant. It

was very difficult to get much testimony out of this witness, Thorn. That is shown by his cross examination. Taken as a whole, however, his cross examination shows as a matter of law, as the defendant contends, that Thorn knew no cotton was ever to be delivered by either side, and no cotton was ever to be received. In that connection, I wish to call the court's attention to the fact that the respondents claim that they were the agents of the petitioners. The petitioner testified that he had no intention of delivering or receiving any cotton. He was the principal. His intention controlled. There is no testimony in the case as to who the principal was, who was back of the brokers who deal with the respondents on the other side. The transaction, the respondents claim, was made around the cotton "ring" in the cotton exchange. Browne was a principal back of Thorn & Maginnis, and there was some principal back of Ellis & Company, and the other brokers. There was no direct testimony introduced to show what the intention of that other principal was. There was no direct testimony introduced to show what the intention of that other principal was. There was no testimony introduced to show what the intention of Ellis the other broker was. The intention of Browne controls the intention of Thorn. They are both on the same side of the trade. Thorn had not sold any cotton to Browne. Browne had not bought any cotton from Thorn. As to Browne the undisputed evidence is that he had no intention to deliver. That is another reason why a directed verdict should have been given. The very language of this witness itself, shows, on page 425 that there was never

any mention, either in fact or in law, to make any delivery of this cotton. In speaking of the transaction and the defendant on that page, the plaintiff said:

> "He might have been accumulating cotton and concentrating it to ship to Liverpool. He might have been buying a hundred bales here and 200 bales there until he got a sufficient amount to ship. Now he couldn't take the chances of a market fluctuation up to the time that he got ready to ship an order say, of 2000 bales. He had to protect himself in the meantime, and that is what the future market is for, to allow that protection to a man who doesn't want to take a chance. That is the original purpose of the big exchanges of the world. It is to offer protection in the way of commercial insurance to those buyers and sellers and shippers of cotton, who don't wish to take the opportunity—or at least, don't wish to take the risk. It also affords a man with a smaller amount of capital the way to handle a very much larger volume of business than he would be able to handle without the future exchanges.
> "Q. Is that all? A. No.
> "Q. Go on and finish your answer.
> "A. It also serves as a world's market where everybody who wishes to buy and sell can come to that market and buy or sell, as the case may be, and allows a great many smaller people who would not be buyers in a large way, to buy a larger amount of cotton than they ordinarily could with their capital because they can get this commercial insurance, which is very little if any more than the cost of the insurance that you carry on your house. It allows a man who wishes an opportunity of making a trade today to take advantage of it, whereas without the future business he could not have put through that transaction without taking too big a hazard. I think that answers it."

That on its face shows that there was no intention to deliver the cotton or to receive it. As before urged, that is confirmed by the statement of the account, which appears on page 439, and also by the numerous letters appearing on pages 442 to 542. Only a few of these will be referred to.

On page 542 the plaintiffs, in a letter to the defendant, called his attention to the fact that there was insufficient margin to carry the deal over night. Unless a deposit was made, they would close out his transaction. It is admitted that a margin might be required where there was an actual intention to deliver. However, a reference to a margin in dealing in futures, has such a common ordinary meaning, that no court can be misled by it. The "market," as that letter shows, made a sharp advance, and the account was not closed out. This shows that the plaintiffs were relying upon the margin and the margin alone, and that they were speculating upon the rise and fall of prices. They were mere agents of the defendant. The defendant did not intend to deliver or receive. That is made clear from all the letters of the plaintiffs to the defendant. Therefore, the plaintiffs knew there was no intention on the part of anybody to deliver or receive the cotton. This is illustrated in the letter of October 23rd, on pages 449 and 450. The plaintiffs, as is shown by the cross examination, were unable to explain the meaning of those telegrams. The orders are in the following language:

"Sell five hundred December at eighteen thirty stop."

The plaintiffs admitted that that was an order to sell five hundred bales for December delivery at the price of 18.30c per pound and that his loss was to be stopped at some figure. Whether it was to sell it at the market and stop the loss at 18.30c per pound, the plaintiff would not undertake to say. The witness had been all his life apparently, on the New Orleans Cotton Exchange, and yet he was in doubt whether those orders were to sell at the market and stop the loss at 18.30c. That seems to be their meaning. Witness made two or three varying statements in regard to it, but such seems to be the purpose of such telegrams. This is confirmed by a letter of October 25th, in which the plaintiffs advise the defendant that they sold 500 December at 19c on stop. Whether defendant had so-called "cotton" at that time or not, the witness was unable to say. This shows that is made no difference whether defendant was long on cotton on the books of the company, or whether he was short. They would buy or sell, regardless of the condition of his account on the books.

This is illustrated again by another letter on page 454, where they bought 400 July at 18.70c and sold it out before they reported the purchase, and yet they would have us say that the defendant was not dealing on the rise and fall of prices of cotton futures. The character of the transaction is also shown in the same letter, where the plaintiffs speak of "liquidation," and "weakness" of the market, and "bullish" sentiment, and the "tone" of the market. All of these expressions refer to trans-

actions covering the rise and fall of the price of cotton on the exchange.

This is illustrated again in the letter of October 31st, on page 455. That shows the purchase of 400 bales, and the sale of 200 bales, all reported in the same letter. On page 455, the plaintiff explains that when he represents Browne, the other broker represents another principal, back of the other broker. Neither has anything to do with the name of the principal on the other side. Each broker only knows the broker. New Orleans Cotton Exchange allowed only members to trade on the exchange. The exchange has jurisdiction over members, but over nobody else. The gambling nature of this transaction is shown by a market letter, on page 456. The difference between spot cotton and futures is there referred to. The same is true of a letter on page 457. This is illustrated also on page 461, where the plaintiffs in a letter to the defendant, say:

> "The market today made another sharp advance on rebuying by former bulls on small crop estimates."

In the same letter it was said that there was some buying on expectation of a smaller ginning report. It is also said there was further "realizing" on Wall Street, and other longs, and the market presented a decidedly two-sided appearance. Everybody knows that "realizing" is a deal in which neither side intend delivery. It was very erratic with sharp fluctuations. All information continues to be of a "bullish" nature. They say to the

defendant, that they think it prudent to exercise more than ordinary caution at present levels.

It is confidently submitted to the court that that letter has no other meaning than that these transactions were gambling in futures—speculating on the rise and fall in the price of the market. It is respectfully submitted that in reading all of these letters, the telegrams and the evidence of the plaintiffs no other conclusion can be reached. See also the letter on page 463, where "trading" is referred to as being of a smaller volume, and largely confined to the "professional" elements. Trading is not buying "cotton" with any expectation of delivery. The "professional" elements are among those who buy and sell expecting profit on the rise and fall. The professional element is defined to be the people who stay in the exchange, and "operate" in cotton futures. They never deliver a bale, or receive a bale. At least, there is no evidence that they ever do either. This is further shown by the language of the plaintiffs, that there was a tendency to even up commitments over the forth-coming Presidential election. That, too, can have but one meaning. The witness explained that evening up commitments would indicate that certain people were buying in or would sell out if they were long. He was asked then, if that did not indicate that these people wanted to take their profit. He said it might not be any profit. Of course, it might be a loss. The witness was then asked if those people wanted to even up. He said it meant that they wanted to cover the contract. The meaning of that is clear and unmistakable. They had

either lost or made on the purchase or sale, and they were getting out of the market so as to lose no more, or make no more on the rise and fall in price during the interval over the election. The same idea is contained in the letter of November 6, on page 464. In that letter it is shown that the speculators in futures are influenced by the strong spot cotton situation. This shows that the defendant was dealing in futures, and was not dealing in spots. The gambling nature of the transaction is also shown in plaintiffs' letter of November 8, discussing the rise and fall of futures due to the reports about the election. On the news that one candidate had been elected, prices rise; on the contrary news, prices fall. In that letter it is said that the spot situation warranted the expectation of higher values ultimately.

No court needs any evidence other than that, to show that no delivery was contemplated. It avails nothing for the plaintiffs to say they contemplated a delivery. They were not selling to Browne. Hence they could have no intention of delivering. They make no effort to show what the buyer from Browne or the seller to Browne intended. Without evidence it must be assumed that the one buying from or selling to Browne had the same intention as he did. Their intention is not controlling. The defendant contemplated no delivery. Plaintiffs did not know whether the principal with whom the defendant dealt, contemplated a delivery or not. It will be observed that nearly every one of these letters written by the plaintiffs to defendant, was followed by a telegram from the defendant to plaintiffs, authorizing the plaintiffs to buy

or sell futures on the New Orleans Cotton Exchange. Some were dealt in on the New York Cotton Exchange Most of them were on the New Orleans Cotton Exchange. The letter of November 11, 1916, is strongly probative of the fact that the transaction was a gambling one. That letter contained a telegram from the defendant to plaintiffs, asking them whether he was long. Everybody understands the meaning of that. Did he stand on their books as a purchaser of futures or not? In the same telegram he ordered that the plaintiff stop all his holdings at 19c, and directed them to close all contracts and wire amount to his credit. On the same day, he wired them to buy two March New Orleans. Telegrams sent, show that they sold six January, 19c on stop. It seems incomprehensible, it seems unreasonable, it seems unjust for a court to say that that telegram means that actual delivery was contemplated by anybody. They were buying and selling for defendant, many, many times every day, and almost every hour in the day. To say that delivery was contemplated under those facts, is to say an absurdity. More than one hundred pages of these similar letters and telegrams are in the record. See an important one on page 518. The gambling nature of these transactions is further shown by the statement of purchase and sale, made by the plaintiffs to the defendant. These begin on page 534. A study of them demonstrates that the parties were gambling in futures. The one at the top of page 534 shows the purchase of 500 bales January cotton, and the sale of 500 bales October. A profit of 441 points, amounting to $2,205.00

is shown. This demonstrates beyond controversy, that the cotton was bought on October 20th, for a rise in price, and was sold at the rise in price on October 24th. It seems that each transaction was accompanied with one of these statements of purchase and sale. There are probably sixty to seventy-five of them. They are all similar and are accompanied with a letter. The form of letter is found on page 534. It recites that the following transactions in cotton for future delivery were made for the account and risk of the defendant, subject to the rules and regulations of the New Orleans Cotton Exchange, and the United States Cotton Futures Act, Section 5. It is said that on all marginal business, they reserved the right to close transactions when margins are running out, without further notice. They say nothing about when margins are already out.

Another one of these statements is found on page 535. It shows the purchase of five hundred bales of October cotton, and the sale of it on October 18th, at a profit of $2020.00, 404 points.

On page 536 another shows the purchase of 400 bales of October 5, and the sale of 400 bales on October 11th, 80 points, profit $400.00. It is shown to be a profit.

There are two on page 537, which also show to be a profit.

On page 538, plaintiffs show the purchase of 400 bales, and the sale of it on the same day at loss of 75 points, totaling $375.00, with commissions, making a total loss of $435.00.

To say that delivery was intended on a transaction like that, is to say something that cannot be delivered by anybody. No court should shut its eyes to the truth.

On page 539 are similar statements showing profits. On page 540 a loss is shown of $900.00. The cotton was bought on January 22, and sold on the same day, 1000 bales.

How is it possible that a court can accept the statement of the respondents, that they intended a delivery of that cotton? They were acting merely as Browne's agents. Hence they could have no intention. It was bought and sold on the same day, with no evidence of an intention to deliver, and at a loss of $900.00 to the petitioner. Who it was that sold the cotton to the defendant, and that bought it from him, does not appear. The principal back of the other broker is not given. The true inwardness of the transaction is again shown on page 541, in a report from plaintiffs to the defendant. That shows a sale on January 12, of 500 bales of cotton. To cover that sale on January 22nd, 500 bales were bought. In that transaction defendant was a bear. He sold it before he bought it. That speaks for itself.

On page 541, the same page, 200 bales were sold and 200 bales bought. It is not shown whether the sale occurred before the purchase but there was a loss. Thus, throughout the four months, the daily transactions show that they were absolutely and without qualification dealing on the rise and fall in the price of cotton. There can be no escape from the conclusion that the evidence shows, beyond controversy, that there was no intention

to deliver the cotton. The petitioner testifies that he had no intention to deliver or to receive, but the point is that the plaintiffs' evidence conclusively shows that there was an absence of an intention to deliver by the principal, or by the respondents in their case, or by anybody else, who was on the other side of the transaction. There is no evidence to show that the parties on the other side of the transaction intended to deliver or to receive.

VI.

**The court erred in holding in the charge to the jury that the intention not to deliver must exist in both petitioner and the respondents.**

The Court of Appeals held that if the intention not to deliver existed on the part of only one of the parties, then the transaction was not a gambling venture. That may be the rule in some jurisdictions, but under the Cotton Futures Act of Congress there is nothing to show that such is the meaning of the law under that Act. This question was raised by petitioner's request No. 10, which is as follows:

> "If either party to the contract, that is, if the defendant or the plaintiffs, or if the defendant's vendee or vendor, did not intend under these contracts to deliver any cotton or to receive any cotton, and if it was intended only to settle as above stated upon the rise and fall in price of cotton, then the contracts were wagering contracts, and there can be no recovery in that event."

VII.

**The court erred in holding that hedging was not dealing in futures.**

On that subject, the District Court said:

> "Reference was made in the testimony to what is termed hedging. Hedging is a means by which collectors, owners and exporters of cotton, or other products and manufacturers who make contracts in advance for the sale of their goods, secure themselves against the fluctuations of the market by counter-contracts for the purchase or sale, as the case may be, of an equal quantity of the product or of any material of manufacture. Such contracts are legal and if you find from the testimony that the contracts in this case were hedging contracts, then they were legal and enforceable, or if you find that the plaintiffs believed that they were hedging contracts, they were legal and enforceable."

I find nothing in the United States Cotton Futures Act, which authorizes a hedging contract as defined in the testimony. The hedging contract is not justified, either under the Act of Congress or otherwise. If a hedging contract is made, not in accordance with the Cotton Futures Act, said contract is necessarily a violation of the law. The Act, itself, makes it a misdemeanor to deal in futures in violation of the contract. Anyone who aids or abets in making these illegal contracts is guilty of a misdemeanor.

> See U. S. Legal Code, Sect. 322; 35 U. S. Stat. 1152, 6 Fed. Stat. Ann. p. 984, and cases there cited.

It is claimed that a hedging contract is made for the purpose of securing profits already made, or to prevent losses on grain or cotton, that may be held. That does not prevent it being a gambling contract. For illustration, if a man owns 100 bales of cotton, and if the price is at 20c, and if he is not prepared to deliver that cotton at any specific date, then it is contended that he may sell futures for the purpose of preventing a loss on the spots which he holds. It will be remembered that there is no connection between the actual commodity which he holds, and a future contract. Therefore, under the circumstances, when a man sells futures simply to save himself from a loss on the spots, he is violating the law, because he is trading in futures without any intention to deliver, but merely to save his profit on the rise or fall in price. I cannot possibly see any defense to a hedging contract. It is an admission that he does not intend to deliver the cotton. If a man owns 100 bales, and then sells 100 bales on the New Orleans Cotton Exchange, he admits that he does not intend to deliver the cotton on the New Orleans Cotton Exchange. A man may own 100 bales in Arkansas and desire to sell it in Liverpool. The price at the time is satisfactory. He therefore sells on the New Orleans Cotton Exchange, so that he may make his profit without delivering the cotton on the New Orleans Cotton Exchange. He delivers it in Liverpool or New York, or somewhere else. After he sells his spots, then he buys on the New Orleans Cotton Exchange simply for the purpose of closing out his future deal. The purpose of the future deal was to speculate

on the rise and fall in prices. It is a speculation, although it is made for hedging purposes. It can have no other construction. For that reason the court erred in giving the instruction referred to.

In addition to that, it was error to give this instruction because there is no evidence upon which to support it. Thorn was the only witness who testified on the subject. He had no knowledge that Browne was hedging. He said that Browne might be hedging. Hence, the instruction was without evidence to support it, and is not the law.

## VIII.

**Error of the court in refusing instructions based upon the Cotton Futures Act.**

The requests made by the defendant and refused by the court, to which exception was saved and referred to in said assignments, are as follows:

> "Under the Act of Congress, known as the Cotton Futures Act, and under the Treasury Regulations made thereunder, the evidence in this cause is insufficient to show that the dealing in cotton for future delivery referred to in the evidence in this cause, and the contracts made for the purchase and sale of said cotton complied with the Cotton Futures Act."
>
> "Under the Cotton Futures Act of Congress, no legal contract for the future delivery of cotton can be made except by putting said contract in writing. The contracts offered in testimony state on their face that they are made in compliance with the Cotton Futures Act of Congress and the regula-

tions of the New Orleans Cotton Exchange. The rules of the New Orleans Cotton Exchange permit oral contracts. The Act of Congress does not permit oral contracts of that kind. Hence under the Act of Congress the contracts offered in evidence are invalid and cannot be the basis of a recovery in this action."

"It was the intention of Congress in passing the Cotton Futures Act of Congress to strike down and make illegal and void every contract for the future delivery of cotton, unless said contract was made in accordance with the terms of said Cotton Futures Act. Therefore, if the Internal Revenue of two cents per pound as provided by the Act of Congress was not paid by the parties to the contract offered in testimony, and if the parties did not enter into the contract as provided by said Act of Congress, then the entire transaction is illegal and void, and there can be no recovery in favor of the plaintiff. The Cotton Futures Act of Congress as to the tax provided as follows:

'That upon each contract of sale of any cotton for future delivery made at, on or in any exchange, board of trade or similar institution or place of business, there is hereby levied a tax in the nature of an excise of two cents for each pound of cotton involved in any such contract.'"

"Section 4 of said Cotton Futures Act is as follows:

'(Contracts for Sale Form and Contents.) That each contract of sale of cotton for future delivery mentioned in section three of this Act shall be in writing plainly stating or evidenced by written memorandum showing the terms of such contract, including the quantity of the cotton involved and the names and addresses of the seller and buyer in such contract, and shall be signed by the party to be charged, or by his agent in his behalf. If the contract or memorandum specify in

bales the quantity of the cotton involved, without giving the weight, each bale shall, for the purpose of this Act, be deemed to weigh five hundred pounds.'"

"Under Section 5 of said Cotton Futures Act, it is provided that no tax shall be levied under the Act on any contract of sale mentioned in Section 3, quoted above, if the contracts comply with each of the conditions named in Section 5. One of these conditions is that said contract must conform to the requirements of Section 4 and the Rules and Regulations made pursuant to that Act. After the passage of said Act, certain regulations were made by the Treasury Department of the United States. Acting under the authority of said Act of Congress, the Treasury Department of the United States adopted the following regulation:

'No provision, by-law, rule or custom of any exchange, board of trade or similar institution or place of business which is inconsistent or in conflict with any requirement or provision of the Act to provide revenue to defray war expenses and for other purposes, approved October 3, 1917, or any regulations thereunder, nor any collateral, or additional agreement or understanding, either verbal or written, respecting the subject matter of such contract or the settlement or fulfillment thereof, which is inconsistent or in conflict with any requirement of said Act or the regulations thereunder promulgated by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall exempt any person from the payment of the tax provided for under Section 807, Subdivision 5, of said Act.'

"The jury are therefore instructed that if there is any provision, by-law, rule or custom of the New Orleans Cotton Exchange which is inconsistent with or in conflict with any requirement or provision of the Act of the Cotton Futures Act, or if

there is any additional agreement, understanding, either verbal, or written, respecting the subject matter of said contract or the settlement or fulfillment thereof, which is in conflict with any requirement of said Act, then and in that event the contracts offered in evidence would be illegal and void, and there can be no recovery. In that regard, if the provisions of the New Orleans Cotton Exchange regulations and rules provide for verbal contracts or if they provide for settlements so as to prohibit the actual delivery of the cotton to the defendant if actual delivery was intended then said regulations would be in conflict with the Act of Congress, and the rules of the Treasury Department and in that event said contracts would be invalid and no recovery could be had upon them."

It is respectfully submitted that it was error to refuse each of these instructions.

**Error in Refusing Instruction No. 7.**

That instruction is assignment of error 135, page 46, and is as follows:

"If, under the rules and regulations of the New Orleans Cotton Exchange the plaintiffs or the buyer or seller of cotton to or from the defendant, had the right to prevent the defendant from actually receiving the cotton contracted for, or if under said regulations there was any impairment of the defendant's right to receive said cotton, then the contracts offered in testimony did not comply with the Cotton Futures Act and the Treasury Regulations thereunder, and if that be the fact, then the plaintiffs cannot recover."

Under the Cotton Futures Act and the treasury regulations made in pursuance thereof, and by reason of

each of them this instruction should have been given. It is the intention of the Cotton Futures Act to prevent gambling ventures in cotton. Hence, the court should give the Act a liberal construction in that respect. Section 3 of the Cotton Futures Act requires the payment of a tax of 2c on each pound. If, under the rules of the New Orleans Cotton Exchange, the person who sold to Browne or the person who bought from Browne had the right to prevent the actual delivery of cotton under the said rules, then it seems reasonable to say that said contract would be in violation of Section 4 of the Cotton Futures Act. That section requires the contract to be in writing, plainly stating the terms of such contract, including the quantity of the cotton involved and the names and addresses of the seller and buyer in such contract. It really seems that Congress clearly intended that every person interested in any contract should have his name on that contract. To say that the brokers may make written contracts, as agents for their principals, without any writing from the principals, authorizing the signature for the principal on behalf of the agent, seems to me to change the meaning of the Act of Congress. The contract must be signed by the principal or by his agent, *in his behalf*, which means in the name of the principal. Hence, the law seems to be that if it is not signed by the principal through himself personally, it must be signed by the principal by the agent. In other words, the principal's name must be on the contract, and it must show on the contract that the name was signed by the agent. If that is not the rule, then the brokers on

the Cotton Exchange may buy, for one-half of the people of the United States on one side, and one-half on the other, without anything in writing to show that the contract was executed by the principal. I do not think the Act of Congress is subject to that construction.

Therefore this instruction No. 7. should have been given.

**Error in Refusing Defendant's Request No. 8.**

This request is found on page 47 in assignment of error 136, and is as follows:

> "If the defendant on the morning of February 1, 1917, sent to the plaintiffs a telegram, authorizing them to stop his losses on 1000 bales at 17.20 cents per pound and on 1000 bales at 17.15 cents per pound, and if there was a custom upon the New Orleans Cotton Exchange, authorizing the plaintiffs upon receipt of that telegram to sell defendant's cotton at 14 cents per pound, and if that custom was unknown to the defendant, then such telegram would not authorize the plaintiffs to sell out defendant's contracts for the future delivery of cotton, if they were valid and at the price of 14 cents per pound. If such are the facts, the sale made by the plaintiffs of 2000 bales of cotton at 14 cents was unauthorized by the defendant and in that event the plaintiff cannot recover."

It is respectfully submitted that the court should have given this instruction. There was no testimony to show that the defendant had any knowledge of any custom on the New Orleans Cotton Exchange, authorizing the sale of his cotton at 14c, when he had authorized it to be sold at 17c. Even if the contract is in every way

valid, it was error to refuse this instruction. It was an issue of fact for the jury to determine whether or not the respondents acted properly under their authority as brokers. There is no evidence that the petitioner had any knowledge that cotton would open on the New Orleans Cotton Exchange as low as 14c. The respondent's evidence tends to show that they frequently gave information when the margins were getting too low. Under the facts in this case, when cotton opened at 14c, considering the transaction valid, petitioner's margin had already been entirely wiped out. He was entitled to notice before he should be closed out. Therefore, it was error to refuse this instruction.

The respondents attempted to show that under a custom of the New Orleans Cotton Exchange, a telegram like that, authorizing the sale of one thousand bales at the price of 17.20 cents and one thousand bales at 17.15 cents would authorize the sale of cotton at 14 cents if the market was at 14 cents when the telegram was received, the defendant not knowing that the market had thus fallen. It is respectfully submitted that such is not the law without proof that the petitioner understood that custom. I have searched the rules of the cotton exchange, which are in evidence, and do not find anything in those rules that would authorize such a construction to be placed upon that telegram. There is nothing in the complaint which explains that such is the meaning of the telegram. There is nothing shown in other telegrams or letters which tends to prove that the defendant had any such knowledge of any such a custom.

The following authorities hold that before a custom of that nature can be proved, it must be shown that it was known to the opposite party.

*Irwin* v. *Williar*, 110 U. S. 499.
*Baxter* v. *Sherman*, 73 Minn. 434, s. c. 76 N. W. 211.
*Robbins* v. *Maher*, (N. D.) 103 N. W. 755.
*Ferguson* v. *Gooch*, 94 Va. 1, s. c., 26 S. E. 397.
*McSherry* v. *Blanchfield*, 68 Kan. 310.
*Gilmer* v. *Young*, 122 N. C. 806.
*New Roads Oil Mill Co.* v. *Kline Wilson & Co.*, 154 Fed. 296.
*Weir* v. *Dwyer*, 114 N. Y. S. 528.

The latter case is exactly in point, as it was an action for advances by a broker.

*Johnson & Moran* v. *Buchanan*, (Tex.) 116 S. W. 875.
*Talbot* v. *Mattox etc. R. R. Co.* (Okla.) 109 Pac. 128.
*Exchange National Bank* v. *Little*, (Ark.) 164 S. W. 731.

Many other cases could be cited along the same line. *It would seem to do great violence to fair dealing to hold that a telegram to sell 2,000 bales of cotton at* 17.15 *cents per pound could be held to authorize a sale at* 14*c without any notice that the price had fallen to that figure.* It does seem that right dealing would require that the defendant should be given notice under the circumstances. The telegram on its face authorized no such transaction. At most, the defendant authorized

the sale of the so-called cotton at 17.15c per pound. He did not authorize it at any less figure. There is no showing that he knew or had any opportunity to know at the time that he sent the telegram, that cotton was as low as 14c. There is nothing to show that he could anticipate that cotton would be as low as 14c. It therefore seems reasonable to say that the telegram was inadmissible, and the custom was inadmissible, and any explanation of the telegram was inadmissible, without first stating that the defendant knew that if he authorized the sale of the cotton at 17.15c per pound it might be sold under a custom at 14c per pound.

The following cases are referred to for the purpose of showing the duties and obligations existing between broker and customer did not authorize such sale:

*Ling* v. *Malcolm*, (Conn.) 59 Atl. 698; s. c., 77 Conn. 517.

*Winston* v. *F. A. Longshore*, 116 La. 21; s. c. 40 So. 517.

*Katz* v. *Nast*, 187 Fed. 529.

*Hughes* v. *Barrell*, 167 Ill. App. 100.

The broker is a pledgee, and he cannot arbitrarily disregard the rights of his customers.

*Richardson* v. *Shaw*, 209 U. S. 365.

*Hurt* v. *Miller*, 190 N. Y. 553.

IX.

**Error in Refusing Instruction Numbered 13.**

That request is found on page 49 in assignment of error No. 141, and is as follows:

"If the plaintiffs were brokers upon the New Orleans Cotton Exchange, and if they purchased for the account of the defendant from other brokers on said Cotton Exchange 2,000 bales of cotton prior to February 1, 1917, and if on February 1, 1917, the plaintiffs, as brokers, sold to other brokers for the account of the defendant 2,000 bales of cotton, and if these trades were in the form required by the rules of the New Orleans Cotton Exchange and the United States Cotton Futures Act, and if the parties to these transactions, under the guise of such a contract, did not intend to deliver or receive cotton under said contracts, and if the real intent was merely to speculate in the rise and fall of prices and the cotton was not intended to be delivered, but one party was to pay to the other the difference between the contract price and the market price of the cotton at the date fixed for executing the contract or at such other date as the parties interested might elect, then the whole contract constituted nothing more than a wager and is null and void, and in that event the plaintiffs cannot recover."

For the reasons heretofore given, it was error to refuse that instruction. It is respectfully submitted that it is not covered by the court's charge.

**Error in Refusing Instruction No. 14.**

That instruction is on page 49, and is Assignment of Error 142, and is as follows:

"If the parties, the plaintiffs and the defendant, or the latter's vendors or vendees, at the time of entering into the transactions, did not intend to deliver any cotton on the contract, and if it was their intention not to deliver any cotton, but to take profits or losses by the rise or fall in the price of cotton,

> then said contracts are void, and if such are the facts, then even if the defendant agreed to pay the balance, such an agreement in that event would not be binding, and under those facts, the plaintiffs cannot recover on any agreement by defendant to pay, if he made such agreement."

This submits to the jury the question of the intention of the vendor in the cases where the defendant bought, and to the vendee in the cases where the defendant sold. It seems to me there is no escape from the contention that that issue should have been submitted to the jury, and that the refusal of that instruction is error. If it be true that the principal of the broker opposed to the plaintiffs did not intend to deliver or receive, and if Browne did not intend to deliver or receive, then it was a gambling venture. That would be true, even though the brokers themselves, under the New Orleans Cotton Exchange rules, intended a delivery, if the contract ever matured.

**Error in Refusing Instruction No. 15.**

This instruction is the counterpart of that given by the court on the question of hedging. This instruction is found on page 50, and in Assignment No. 143. It tells the jury that if hedging contracts were made with an intention neither to deliver nor receive the cotton, they are invalid, and if the transactions in question were of that nature, there could be no recovery. It is respectfully submitted that that is the law.

The petitioner respectfully states that the questions involved are of the very highest importance. They in-

volve the construction of an important Act of Congress. Thousands of transactions are going on, on cotton exchanges every business day in the year. Congress has passed an Act requiring the contracts to *be in writing*, and requiring the names of the *buyers* and *sellers* to be inserted in the contracts. The purpose of the Act was to discourage gambling in futures by publicity. It is therefore respectfully submitted, that grave questions are involved, and that therefore, the petition for writ of certiorari should be granted, the writ issued and the cause reversed.

JAMES B. McDONOUGH,
*Counsel for Petitioner.*

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1922

FRED BROWNE, PETITIONER,

VS.

CHARLES B. THORN, WILLIAM T. MAGINNIS, SAMUEL C. COLEMAN, AND MILES J. KEHOE, PARTNERS, DOING BUSINESS AS THORN AND MAGINNIS, RESPONDENTS.

**No. 88, October Term, 1922.**

## ABSTRACT OR STATEMENT AND BRIEF OF PETITIONER.

JAMES B. McDONOUGH,
*Counsel for Petitioner.*

September 15, 1922.

## INDEX.


Page

Assignments of Error Relied Upon in this Court.. 28

Brief of the Argument . . . . . 32

Conclusion . . . . . 128

Error of the Court in Refusing Instructions Based Upon the Cotton Futures Act . . . . . 115

Error in Refusing Instruction No. 7 . . . . . 119

Error in Refusing Defendant's Request No. 8. . . . 120

Error in Refusing Instruction Numbered 13. . . . . 124

Error in Refusing Instruction No. 14. . . . . 125

Error in Refusing Instruction No. 15. . . . . 126

Questions Involved . . . . . 28

Respondents were not Authorized to Sell Two Thousand Bales of May Cotton at Fourteen Cents on a Telegraphic Order Directing a Sale of One Thousand Bales at Seventeen and Twenty Hundredths Cents and One Thousand Bales at Seventeen and Fifteen Hundredths Cents . . . . 38

Respondents Introduced No Substantial Evidence to Show that they were Without Knowledge of Petitioner's Intention Not to Receive or Deliver Cotton. . . . . 103

Statement of the Case. . . . . 1

Summary of the Complaint . . . . . 3

Summary of the Answer . . . . . 5

Summary Statement of the Transactions . . . . . 7

The Alleged Contracts or Brokers Slips were not Contracts such as Required by the Rules of the New Orleans Cotton Exchange and the United States Cotton Futures Act, Section 5 . . . . . 13

Page

The Cotton Futures Act is in Part Invalid Especially in so far as it Attempts to Regulate the Proceedings upon the New Orleans Cotton Exchange, and is Valid in so far as it Levies a Tax of Two Cents per Pound on Cotton Involved in Future Contracts. . . . . 32

The Brokers Slips Offered in Testimony Failed to Show a Contract in Compliance with the United States Cotton Futures Act. . . . . 42

The Meaning of the Words "The Party to be Charged" in the Act of Congress. . . . . 49

The Offered Contracts or Alleged Contracts are Illegal Under Cotton Futures Act as well as Under the Rules of the New Orleans Cotton Exchange . . . . . 60

The Undisputed and Substantial Evidence in the Case Conclusively Shows that Neither Petitioner nor Respondents intended any Delivery of any Cotton. This is True Notwithstanding the Statements of Two or Three of Respondents that the Contracts Called for Delivery, and that Delivery was Intended. The letters, Telegrams and Reports cannot be denied, and they show Beyond Controversy that Respondents did not intend any Delivery. The Directed Verdict should, therefore, have been Given because the Undisputed Evidence shows a Gambling Venture. . . . . 64

The Absence of a Right in the Petitioner to Enforce Delivery of The Cotton tends to show that There was no Intention to Deliver . . . . . 75

The Undisputed Evidence in the Way of Letters, Telegrams, and Statements from Respondents show Beyond Question the Absence of an Intention to Deliver. . . . . 77

Page

The Court Erred in Holding in the Charge to the Jury that the Intention Not to Deliver must exist in Both Petitioner and the Respondents.. 110

The United States Courts will not Enforce in the State of Arkansas a Contract which is Illegal under the Laws of that State even though said Contract be Valid in the State of Louisiana .. 112

The Court Erred in Holding that Hedging was not Dealing in Futures. . . . . 113

The Court Erred in Directing a Verdict on the Counterclaim in Favor of the Respondents.... 126

Under the Treasury Regulations, the Offered Contracts do not Comply with Section 5 of the Act of Congress. . . . . 55

Was the Transaction an Arkansas Trade?..... 112

TABLE OF CASES CITED.

Arthwine Natchette Investment Co. vs. Maforlan, (Kan.) 144 Pac. 482 . . . . . .67

Bailey vs. Drexel Furniture Co., 42 Supreme Court Rep. 449 . . . . . .33

Bartlett vs. Smith, 13 Fed. 263 . . . . . 66

Pardridge vs. Cutler (Ill.) 48 N. E. Rep. 125.....67

Baxter vs. Sherman, 73 Minn. 434, s. c. 76 N. W. 211 . . . . . .38,122

Bibb vs. Allen, 149 U. S. 481 .....66, 67, 73

Barnard vs. Backhouse, 52 Wis. 593 . . . . . ...72

Board of Trade vs. Christie Grain Co., 198 U. S. 236 . . . . . .73

Brown vs. Snider, 126 Mich. 198 . . . . . .50

Brown on Stat. of Frauds, Section 244 .....54

Browne vs. Thorn, 272 Fed. 950 .....2

Page

Burrus vs. Witcover, 158 N. C. 384, s. c. 39 L. R. A. (N. S.) 1005 . . . . . 113

Carpenter vs. Beal-McDonald & Co., 222 Fed. 453 . . . 73

Cohn vs. Brinson, (Miss.) 73 So. 59 . . . . . 73

Connor vs. Robertson, (La.) 55 Am. Rep. 521 . . . . . 72

Crawford & Moses' Digest, Sections 2652 to 2666 . . . . . 110,126

Crawford & Moses' Digest, Sections 4899 and following . . . . . 126

Cobb vs. Prell, 15 Fed 774 . . . . . 66

Dickson vs. Thomas, 97 Pa. St. 278 . . . . . 66

Embrey vs. Jemison, 131 U. S. 336 . . . . . 32, 67

E. O. Standard Milling Co. vs. Flour, (La.) 15 So. 16, s. c. 46 La. Ann. . . . . 72

Exchange National Bank vs. Little, 111 Ark. 263 . . . . 39

Exchange National Bank vs. Little, (Ark.) 164 S. W. 731 . . . . . 123

Everingham vs. Meighan, 55 Wis. 354 . . . . . 66

Fareira vs. Gabell, 89 Pa. St. 89 . . . . . 66

Fed. Stat. Ann. 1918 Supp. pp. 359-368 . . . . . 60

Ferguson vs. Gooch, 94 Va. 1, s. c. 26 S. E. 397 . . 39, 122

Fed. Statutes, Ann. Vol. 7, p. 984 . . . . . 47

Kilmer vs. Young, 122 N. C. 806 . . . . . 39, 122

Green, In re: 7 Biss. 338 . . . . . 66

Harnett vs. Wilson, (Calif. App.) 161 Pac. 281 . . . . 73

Hughes vs. Barrell, 167 Ill. App. 100 . . . . . 124

Hurt vs. Miller, 190 N. Y. 553 . . . . . 124

Hill vs. Wallace, Sec'y of Agriculture, 42 Sup. Ct. Rep. p. 453 . . . . . 33

Page

Hubbard vs. Lowe, 226 Fed. 135 .....44
Hyman vs. Hay, 227 Fed. R. 898 .....5
Irwin vs. Williar, 110 U. S. 499....32, 38, 66, 67, 122
Jamieson vs. Wallace, 167 Ill. 388 .....72, 108
James vs. Clement, 223 Fed. 385 .....73
Johnson & Moran vs. Buchanan, (Tex.) 116 S. W. 875 .....123
King vs. Johnson, (Calif.) 157 Pac. 531 .....67
Katz vs. Nast, 187 Fed. 529 .....124
Kirkpatrich vs. Richter, (Ga.) 91 S. E. 51 .....73
Lyon vs. Culbertson, 83 Ill. 33 .....108
Logan & Bryan vs. Postal Telegraph Co., 157 Fed. 570 .....113
Lee vs. Vaughn Seed Store, 101 Ark. 68 .....50
Ling vs. Malcolm, (Conn.) 59 Atl. 698; s. c. 77 Conn. 517 .....124
McSherry vs. Blanchfield, 68 Kan. 310 .....39, 122
Marx vs. Bell, 48 Ala. 497 .....50
McIlroy vs. Seery, 48 Amer. Rep. 110 .....54
Metchert vs. Tel. Co., 3 McCrary, 521 .....66
Medlin Milling Co. vs. Moffett Commission Co., 218 Fed. 686 .....67
North vs. Phillips, 89 Pa. St. 250 .....66
New Roads Oil Mill Co. vs. Kline Wilson & Co., 154 Fed. 296 .....39, 122
Nicol vs. Ames, 173 U. S. 509 .....34, 55
Orbis Bros. vs. Holt-Morgan Mills, (N. C.) 91 S. E. 948 .....73
Patterson's Appeal, 13 W. N. C. 154 .....109

Page

Pate vs. Wilson Bros. Merc. Co., (Tex.) 208 S. W. 235 . . . . . .60
Phelps vs. Holderness, 56 Ark. 300 . . . . . .66, 71
Richter vs. Poe, (109 Md. 120) 22 L. R. A. (N. S.) 174 . . . . . .107
Richardson vs. Shaw, 209 U. S. 135 . . . . . .54
Raymond vs. Leovett, 46 Mich. 447 . . . . . .66
Ruchizky vs. DeHaven, 97 Pa. St. 202 . . . . . .66
Richardson vs. Shaw, 209 U. S. 365 . . . . . .46, 124
Robbins vs. Maher, (N. D.) 103 N. W. 755. . . .38, 122
7 Fed. Stat. Ann. p. 984 . . . . . .34
Smith vs. Jones, 66 Ga. 338 . . . . . .50
Smith vs. Jones, (Ga.) 42 Amer. Rep. 72 . . . . . .54
Sampson vs. Shaw, 101 Mass. 145 . . . . . .66
Steers vs. Lashley, 6 T. R. 61 . . . . . .66
Stafford Co. Grain Co. vs. R. M. & E. Co., (Kan.) 146 Pac. 1139 . . . . . .69
Sprague vs. Warren, 26 Neb. 326, s. c. 3 L. R. A. 679 . . . . . .108
Sharp vs. Stalker, 63 N. J. Eq. 596 . . . . . .109
Teeny vs. Foote, 95 Ill. 99 . . . . . .66
29 American & English Ency. of Law, page 858 . . . .54
Thomas vs. United States, 192 U. S. 363 . . . . . .34
Thorn vs. Browne, 257 Fed. 519 . . . . . .2
Treat vs. White, 181 U. S. 264 . . . . . .34
39 U. S. Stat. at Large, page 482 . . . . . .36
20 Cyc. p. 272 . . . . . .50
Talbot vs. Mattox etc. R. R. Co., (Okla.) 109 Pac. 128 . . . . . .123

Page

35 U. S. Stat. 1152 . . . . . 34, 114
United States Penal Code, Sec. 332 . . . . . 34, 47
United States Legal Code, Sec. 332 . . . . . 114
Weir vs. Dwyer, 114 N. Y. S. 528 . . . . . 39, 122
Williams vs. Robinson, 73 Me. 186 . . . . . 48
Wilson vs. Louiston Mill Co., 150 N. Y. 314 . . . . . 50
Watson vs. Winston, (Tex.) 43 S. W. 852 . . . . . 50
Waldron vs. Johnson, 86 Fed. 757 . . . . . 73
Weare Commission Co. vs. People, 209 Ill. 528 . . . . 72
Williamson vs. Majors, (5th Cir.) 169 Fed. 754 . . . . 72
Wolf vs. Andres, (Tex.) 196 S. W. 266. . . . . 73
Waite vs. Frank, 14 S. D. 626 . . . . . 108
Winston vs. F. A. Longshore, 116 La. 21; s. c. 40 So. 517 . . . . . 124

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1922

FRED BROWNE, PETITIONER,

VS.

CHARLES B. THORN, WILLIAM T. MAGINNIS, SAMUEL C. COLEMAN, AND MILES J. KEHOE, PARTNERS, DOING BUSINESS AS THORN AND MAGINNIS, RESPONDENTS.

**No. 88, October Term, 1922.**

## ABSTRACT AND BRIEF OF PETITIONER.

## STATEMENT OF THE CASE.

This is a suit to recover a balance amounting to Twenty-three Thousand Two Hundred and Fifteen Dollars ($23,215.00), with interest and costs, amounting to about $33,000.00, growing out of transactions in cotton futures between petitioner and respondents com-

mencing September 22, 1916, and ending February 1, 1917. The respondents were members of the New Orleans Cotton Exchange, and claimed that they were brokers buying and selling cotton on the exchange in accordance with its rules and the United States Cotton Futures Act, Section 5, and that as such brokers they expended for the use and benefit of the petitioner from January 25, 1917, to February 1, 1917, Twenty-nine Thousand Six Hundred and Seventy-five Dollars ($29,675.00), and that on February 1, 1917, the petitioner had as a credit on the books of respondents Six Thousand Seven Hundred and Sixty Dollars ($6,760.00). They deduct the latter amount from the former, add thereto their commission of Three Hundred Dollars ($300.00), which leaves a balance, as they claim, due from petitioner to respondents growing out of these deals in cotton futures amounting to Twenty-three Thousand Two Hundred and Fifteen Dollars ($23,215).

At the first trial after the respondents had introduced all their testimony, the District Court sustained a motion to exclude all of the testimony from the record, and directed a verdict in favor of the petitioner. The respondents appealed that cause to the Court of Appeals, and the latter court reversed the cause and remanded it for trial.

*Thorn* v. *Browne*, 257 Fed. 519.

The second trial resulted in a verdict from the jury in favor of respondents with interest on the amount claimed at Six Percentum (6%) from February 8, 1917. The judgment on that verdict was rendered January 30,

1920, for the sum of Twenty-seven Thousand Three Hundred Sixty-two Dollars and Seventy-four Cents ($27,362.74) with costs. A writ of error was taken, and the cause reviewed by the Court of Appeals of the Eighth Circuit, and affirmed.

*Browne* v. *Thorn*, 272 Fed. 950.

This Court (257 Fed. 519) denied the *certiorari* to the Circuit Court of Appeals on the first appeal to that court. See 249 U. S. 645. After the cause had been affirmed by the Circuit Court of Appeals of the Eighth Circuit, this Court granted a writ of *certiorari*, and the case is now here for review on the questions involved in the last trial. The numerous assignments of error of which the Court of Appeals made some "suggestion" were necessary to preserve the questions for review by this Court. The questions involved are very few, but they are important. If this Court sustains the first point, a consideration of the others will be unnecessary.

## Summary of the Complaint.

The complaint appears in full on pages 3 to 7, inclusive. The respondents, as plaintiffs, allege that they are citizens and residents of the State of Louisiana, and doing business as cotton brokers on the New Orleans Cotton Exchange under the name of Thorn & Maginnis. Browne, the petitioner, is a citizen and resident of the County of Sebastian, State of Arkansas, and is an inhabitant of the Western District of Arkansas. Between January 25, 1917, and January 31, 1917, as the plaintiffs allege at the special instance and request of peti-

tioner, the plaintiffs bought for the account and risk of the defendant two thousand (2,000) bales of cotton for delivery in the month of May, 1917, on the New Orleans Cotton Exchange (4) and subject to its by-laws, rules and conditions, and subject also to the United States Cotton Futures Act, Section 5. An itemized statement of the number of bales bought each day and the price per pound is found on page 4. It is then alleged that on February 1, 1917, at the special instance and request of petitioner, the respondents sold for the account and risk of the defendant two thousand (2,000) bales of cotton for delivery in the month of May, 1917, on the New Orleans Cotton Exchange and subject to its by-laws, rules and conditions, and subject also to the United States Cotton Futures Act, Section 5, at the price of fourteen cents (14c) per pound. It is then alleged that in and about the purchase and sale of said two thousand (2,000) bales, respondents paid out and advanced for defendant at his request and for his use the sum of Twenty-nine Thousand Six Hundred and Seventy-five Dollars ($29,675.00). It is further alleged that said respondents were entitled to charge a commission of Three Hundred Dollars ($300.00), and that after deducting the sum of Six Thousand Seven Hundred and Sixty Dollars ($6,760.00), money of petitioner in possession of respondents, there remained a balance due from petitioner to respondents of Twenty-three Thousand Two Hundred and Fifteen Dollars ($23,215.00). Judgment for that amount with interest from February 1, 1917, was prayed. It will be ob-

served that in the first part of the complaint, the transactions on which the suit is based are limited to six days, including February 1. Exhibit "A" to the complaint, however, which is made a part of the complaint, gives the time of the commencement of the transactions between petitioner and respondents and sets out a copy as it were of the cash book of the respondents covering all transactions with the petitioner. As before stated, that statement shows that petitioner began dealing in futures with respondents on September 22, 1916, and the transactions ended on February 1, 1917. The complaint is very similar to that in *Hyman* v. *Hay*, 277 Fed. R. 898, where the brokers under similar facts lost.

**Summary of the Answer.**

The answer of petitioner begins on page 17. The answer is largely a specific denial of all of the allegations of the complaint. It alleges (18) that the respondents were not authorized to sell the cotton at fourteen cents (14c) per pound. It admits that respondents had in their possession Six Thousand Seven Hundred and Sixty Dollars ($6,760.00) belonging to petitioner, but denies that respondents are entitled to credit that amount on the sum which they claim, and denies that there is due any balance to the respondents of Twenty-three Thousand Two Hundred and Fifteen Dollars ($23,215.00) or any other sum. It is then alleged that said contracts were illegal and void and unenforceable because neither the respondents nor anyone else affixed to said contracts the stamps required by Sections 11 and 12 of the United States Cotton Futures Act. It

is also alleged that the excise tax required by said Cotton Futures Act was not paid, and that the said contracts were not evidenced in writing as required by the Cotton Futures Act; nor were they evidenced as required by the rules and regulations of the New Orleans Cotton Exchange. It is denied that any money was advanced for the use and benefit of the petitioner. It is alleged that the so-called set-offs, settlements and alleged money claimed to have been paid out was not paid out at all, and that there were "ring" settlements and other transactions in violation of the fourth sub-division of Section 10 of the Cotton Futures Act (19). It is then alleged that the acts of the respondents in and about the purchase and sale of said cotton futures were in violation of the criminal laws of the United States; and that any money advanced by respondents was advanced in violation of said laws, and in an attempt to enter into contracts for the purpose of evading the payment of the excise taxes provided by said Cotton Futures Act. It is then alleged that the so-called contracts were made between respondents and sundry brokers upon the Cotton Exchange. It is further alleged (19) that no cotton was ever delivered on said contracts, and that there was no intention of delivery or receiving on said contracts; and that it was intended that there should be no delivery, and that the transactions should be settled and closed by the differences in the rise and fall of the market of cotton on the Cotton Exchange; and that each transaction was carried out by the respondents after proper margin had been advanced and placed in their posses-

sion. It is further alleged that the transactions alleged by the respondents were in violation of the laws of the State of Arkansas, and that they were gambling in futures and were gambling upon the fluctuations in the price of cotton upon the New Orleans Cotton Exchange. It is further alleged that the money was placed by the petitioner to the credit of respondents in the bank in the State of Arkansas, thereby intending to assert and allege that all the transactions were Arkansas transactions, and were contrary to the public policy of the State of Arkansas and wholly illegal and void, and that the money which was paid out, if any, by respondents was paid out in furtherance of transactions which were in violation of the laws of the State of Arkansas; and that said transactions were gaming transactions wrongfully entered into by the respondents; and respondents knew them to be wrongful and illegal and against public policy and void and unenforceable in the United States Court by reason of the laws of Arkansas duly in force on the subject. The petitioner made in his answer a counter-claim for the Six Thousand Seven Hundred and Sixty Dollars ($6,760.00) in the possession of the respondents, claiming that respondents had no right to convert that money to their use.

**Summary Statement of the Transactions.**

On September 22, 1916, petitioner deposited in the Bank of Crowder, State of Oklahoma, One Thousand Dollars ($1,000.00) to the credit of respondents. That bank immediately gave credit to respondents for that sum, and they were so notified. All other payments made

by petitioner on margins were made in the City National Bank at Fort Smith, Arkansas, to the credit of respondents, and the bank notified the respondents by wire, and the money thus received, with the exception of one payment, was all received in the State of Arkansas. One payment, being the initial one, was received in the State of Oklahoma. The detailed statement of the facts hereafter made shows innumerable transactions covering the months of October, November, December, and January.

The petitioner was a farmer and stock raiser living at Crowder, Oklahoma, prior to his moving to Fort Smith, Arkansas (570). Prior to the future dealings involved in this controversy, petitioner had made two small deals in cotton futures, one several years before these transactions, and the other only a short time before. On September 22 (455) after the money had been paid to respondents, petitioner authorized respondents by telegram to sell two hundred (200) bales May cotton. Respondents immediately sold two hundred (200) bales of May cotton at the price of Sixteen and Forty-hundredths Cents (16.40c) per pound (538). The petitioner did not own any cotton at that time. He had bought no cotton to sell. There were grown on his farms about eighty (80) bales of cotton a year generally. The only interest which he had in cotton was a rental interest of a one-fourth (1/4) of the cotton grown on his farm. He would not have that cotton as early as September 22. The respondents, under date of September 22, acknowledged the receipt of the order to sell and advised of their sale, and referred to the order as an

initial order, thus showing that it was the first order given by petitioner to the respondents, thus showing that the petitioner entered upon his dealing in futures as a "bear." In the same letter, respondents acknowledged receipt of the One Thousand Dollars ($1,000.00) deposited to their credit in the Bank of Crowder. The letter is remarkable (419) for its omissions. It is not indicated that any delivery of cotton was intended. They are glad to place his name upon their books, and hope that the order is the beginning "of a mutually satisfactory business relation." They advise that they would wire petitioner from time to time and give him any special information concerning the market which he might want. During the period of four months ending February 1, 1917, petitioner paid to respondents in cash (6) Eighteen Thousand Two Hundred Dollars ($18,200.00). He drew down during that time Thirteen Thousand Dollars ($13,000.00). In the four months, his total transactions amounted to Sixty-six Thousand One Hundred and Fifty-five Dollars ($66,155.00). According to respondents' statement, he, therefore, lost in dealing in futures due to the rise and fall in prices the sum of Fifty-three Thousand One Hundred and Fifty-five Dollars ($53,155.00) (6). During the same time, he made a profit on the rise and fall in prices in futures amounting to Twenty-four Thousand Seven Hundred and Forty Dollars ($24,740.00). These figures are shown in the exhibit which is a part of the complaint, and which appears on pages 6 and 7. They are also confirmed by the telegrams, statements, and other documents, includ-

ing the letters hereinafter referred to. The petitioner, according to his statement, had a net worth of something like Twenty-five Thousand Dollars ($25,000.00), being a hundredth part of the price of the cotton which he had bought (578). According to respondents (103), the petitioner bought on the New Orleans Cotton Exchange Twenty-seven Thousand, Seven Hundred (27,700) bales of cotton. During the same time, he sold the same amount. That cotton at the average price of about Eighty-five Dollars ($85.00) per bale, which was its average price at that time, would have cost Two Million, Three Hundred Fifty-four Thousand Five Hundred Dollars ($2,354,500.00). At the close of business on January 31, 1917, the petitioner, on the books of respondents, was "long" Two Thousand (2,000) bales of May cotton. During that night, the Imperial German Government announced to the world that it would resort to unrestricted submarine warfare in the World War, which was then in progress. At 8:30 on the morning of February 1, the petitioner sent a telegram to the respondents, directing them to sell One Thousand (1,000) bales of his "long" cotton at Seventeen and Twenty-hundredths Cents (17.20c) per pound, and One Thousand (1,000) bales at Seventeen and Fifteen-hundredths Cents (17.15c) per pound. That telegram was received twenty-two (22) minutes before the market opened. The record shows that to send a telegram from Fort Smith to New Orleans or from New Orleans to Fort Smith required ordinarily from two (2) minutes to five (5) minutes. None were sent and received under two (2)

minutes, and a few were sent requiring a little more time than five (5) minutes. The telegram referred to was received in eight (8) minutes by respondents after it was sent by petitioner. The petitioner contends that the respondents had no authority to sell his cotton at Fourteen Cents (14c). Cotton opened on the New Orleans Cotton Exchange at Fourteen and Fifty-hundredths Cents (14.50c) per pound. There was one sale as low as Thirteen Cents (13c) which was made some time after respondents claimed they sold petitioner's Two Thousand (2,000) bales at Fourteen Cents (14c). Mr. Kehoe, one of the respondents (101) states that the highest price of cotton on February 1, 1917, was Seventeen and Thirteen-hundredths Cents (17.13c). That was two points only below the lowest price at which petitioner directed respondents to sell his cotton. The respondents claim that they had the right to sell the cotton either at the stop loss price named in the telegram or at the next best price. They claim there was a custom on the New Orleans Cotton Exchange to that effect. No rule is found in the rules and regulations of the New Orleans Cotton Exchange that will authorize any such action. There is no evidence in the record to show that the petitioner had any knowledge of any such custom. But any such custom, if it existed, would only refer to the execution of a stop loss or where there was a rather gradual fall in price. The transactions which will be hereafter referred to between petitioner and respondents show that respondents always notified petitioner that it was necessary to put up additional margins before

closing him out. They never, at any time, made a "sale" or "purchase" without giving him previous warning of what they would be compelled to do unless he put up the margins. In this one sale, they gave him no notice. They had ample time to advise him of the situation, and to get his advice. It would only have taken four minutes at the outside for them to communicate with petitioner, and get his advice as to whether he would margin up the fall from Seventeen and Twenty-four Hundredths Cents (17.24c) which was the last price on the day before, and the said Fourteen and Fifty-hundredths Cents (14.50c), the price at which the market opened on February 1. It is the contention of the petitioner that he had no knowledge of any such custom, and it is further contended by him that if there was any such custom, it did not refer to the situation arising at the opening of the market on February 1. It is contended by the respondents that they knew nothing of any intention on the part of the petitioner nót to deliver cotton, but in the opinion of petitioner's counsel, they offered no evidence to support that. Petitioner states that he was dealing in futures and was speculating in the rise and fall in the market price. It is submitted that the numerous telegrams passing between the parties show beyond controversy that it was known to respondents that they intended, as well as he, that there should be no delivery of the cotton. It is contended that the evidence on this point is so clear and so powerful in its probative force that the court should have directed a verdict on that ground. It is also contended that the

court should have directed a verdict because the respondents were violating the United States Cotton Futures Act in not paying the tax required by Section 3 of that Act, and that, therefore, they cannot recover. There are several other questions which will be given and discussed below. On some of the days, there passed between petitioner and respondents from ten to twenty telegrams and sometimes even more. Sometimes as many as twenty-five and thirty trades were made in one day. At least half of the orders given by petitioner to respondents, if not more, were *stop loss orders*, orders which show conclusively on their face that the parties were gambling on the rise and fall of prices.

**The alleged contracts or broker's slips were not contracts such as required by the rules of the New Orleans Cotton Exchange and the United States Cotton Futures Act, Section 5.**

There is no contention on behalf of the respondents that the contract required by the rules of the New Orleans Cotton Exchange as to future business was executed. On page 227 of the record and in the rules governing dealing in future contracts and in Section 2 of Rule I adopted February 18, 1915, and in force at the time of these transactions, there appears a contract *required by said rules*, which is as follows:

"CONTRACT

New Orleans,.....,19...

In consideration of one dollar in hand paid, receipt of which is hereby acknowledged,..... ....., of the City of New Orleans, State of

Louisiana, have this day sold to (or bought from) .....of the City of New Orleans, State of Louisiana, 50,000 pounds, in about 100 square bales of cotton, growth of the United States, deliverable from approved storage places for cotton in the Port of New Orleans, between the first and last days of.....next, inclusive, excepting holidays as provided in Rule 40 of the Rules of the New Orleans Cotton Exchange for the transaction of the Future Contract business.

The delivery within such time to be at seller's option, in not more than two approved storage places, upon five business days' notice to the buyer, as provided by the Rules of the New Orleans Cotton Exchange.

The cotton to be dealt with herein or delivered hereunder shall be of, or within, the grades for which standards are established by the Secretary of Agriculture, except cotton prohibited from being delivered on a contract by the fifth subdivision of Section 5 of the United States Cotton Futures Act, and no other grade or grades (subject) to the United States Cotton Futures Act, Section 5, and subject to New Orleans Cotton Exchange inspection and classification) at the price of.....cents per pound for Middling.

In case cotton of grade other than the basis grade should be delivered or tendered in settlement of this contract, the differences above or below the contract price which the receiver shall pay for such grades, other than the basis grade, shall be the actual commercial differences determined as provided in Section 6 of the United States Cotton Futures Act.

Either party shall have the right to call for a margin as the variations of the market for like deliveries may warrant and which margin shall be kept good.

This contract is made in view of, and in all respects subject to, the United States Cotton Futures Act, Section 5, and to the By-Laws, Rules and conditions, not in conflict therewith, established by the New Orleans Cotton Exchange.

(Signed)......"

There was no effort made to prove that that contract was executed. The only contract that was executed, if it be a contract at all, are the brokers' slips. On the subject of the brokers' slips, respondents introduced the bought and sold slips on one transaction, and that was the final transaction dated February 1, 1917. These were bought and sold slips exchanged between respondents and the firm of cotton brokers known as Airey & Stouse. The sale slip occurs on page 416, and is in the following language:

"Office of
Thorn & Maginnis
209 Varieties Place.
New Orleans, La., Feb. 1, 1917.
Sold To

Mess. Airey & Stouse of New Orleans, La., and agreed to Deliver them subject to the By-Laws, Rules and Conditions of the New Orleans Cotton Exchange and subject to the United States Cotton Futures Act, Section 5.

| Bales Cotton | | Delivery | At Cents Per Pound for Middling. |
|---|---|---|---|
| Twenty | Hundred | May | 14 cts |
| One | " | " | 14.20 |
| One | " | " | 14.25 |
| One | " | July | 16.10 |
| One | " | May | 14.45 |
| Three | " | July | 16.10 |
| One | " | do | 16.10 |
| One | " | May | 14.80 |
| One | " | " | 14.50 |

(Signed) Thorn & Maginnis."

The bought slip appears on page 86, and is as follows:

"Office of
Thorn & Maginnis
209 Varieties Bldg.
New Orleans, La., Feb. 1, 1917.
Bought From
Messrs. Thorn & Maginnis, of New Orleans, La., and agreed to Receive from them subject to the By-Laws, Rules and Conditions of the New Orleans Cotton Exchange and subject to the United States Cotton Futures Act, Section 5.

| Bales | Cotton | Delivery | At Cents Per Pound for Middling |
|---|---|---|---|
| Twenty | Hundred | May | 14 cts |
| One | " | " | 14.20 |
| One | " | " | 14.25 |
| One | " | July | 16.10 |
| One | " | May | 14.45 |
| Three | " | July | 16.10 |
| One | " | do | 16.10 |
| One | " | May | 14.80 |
| One | " | May | 14.50 |

(Signed) Airy & Stouse."

Over the objection of the petitioner, the respondents were permitted to prove that the Two Thousand (2,000) bales of May cotton referred to as bought and sold at Fourteen Cents (14c) in those slips was the cotton concerning which Fred Browne made a trade. It was admitted in the record that Fred Browne's name did not appear on any of the bought or sold slips. In many of these slips from three to five transactions appear between brokers and in every case the respondents were permitted to prove by oral testimony that certain

futures for May delivery were transactions had at the request of the petitioner. Due exception was taken to the introduction of all of this testimony.

**The evidence as to the intention of both parties to make delivery and as to the knowledge of respondents as to petitioner's intention not to make delivery.**

As petitioner challenges the sufficiency of this evidence to support a verdict, it is deemed appropriate to refer to all of the evidence briefly in the record on the two subjects above named.

Petitioner and respondents never met personally until Mr. Kehoe (54) went to Arkansas and Oklahoma after these transactions (94 and 95). According to Kehoe (66), these "purchases" and "sales" were made across the ring in the Cotton Exchange, according to the rules and regulations of the Exchange and confirmation slips sent out every evening. These "confirmation" slips showing telegrams "sent" and "received" are found in the evidence of Thorn (459 to 530). These confirmation slips show no intention to deliver, but the contrary. Kehoe speaks (66) of "purchasing" cotton, but he refers to "contracts for future delivery." Respondents trade only with members of the Exchange (6). The "sales" and "purchases" are evidenced by brokers' contract slips (74) on forms prescribed by the Exchange (75). This "slip" is a contract between brokers only (75). Browne's name (79-80) is not mentioned in any of these. The brokers (86) do not know the names of the principals back of the other brokers (86). The Twenty-nine Thousand Six Hundred and Seventy-five

Dollars ($29,675.00) (89) was paid to various brokers by *contracts, settlements* and *ring settlements,* thereby showing an absence of an intention to deliver. May "deliveries" have all been liquidated *on respondents' books* (89) and the account balances. Petitioner admitted the "loss" (94) but said nothing about any intention to deliver. Browne, according to Kehoe (95), was satisfied that Thorn and Maginnis was a responsible firm "before placing his money with us." Kehoe (96) asked Browne whether, if the Kaiser's message had had the opposite effect upon the *market,* and said *market* had *gone* in his (Browne's) favor, the latter would have insisted on *his "profits"* and *"any gains made in his contracts,"* which shows an intention not to deliver and the knowledge of that by Kehoe. Browne (96) had *borrowed to the limit* to make the deals, according to Kehoe (98). When Browne sent in the "stop" order on February 1, "he had no idea the market was going so low" (98). Respondents "handled" Twenty-seven Thousand Seven Hundred (27,700) bales (103) for Browne. Villars (103), a witness for respondents, says he knows nothing about petitioner's (104) *"open"* transactions, because they do not come to him until there is a *"close out."* This shows the absence of deliveries and shows that the business is dealing in profits and losses. The item of Twenty-nine Thousand Nine Hundred and Seventy-five Dollars ($29,975.00) is referred to in counsel's question (106) "as the *result* of a transaction in twenty contracts for May delivery." That means a "purchase" and "sale" to speculate on the difference in price. Respondents'

counsel admit that a "considerable proportion" of the Twenty-nine Thousand Nine Hundred and Seventy-five Dollars ($29,975.00) *resulted* from "ring" settlements. Exact amount, if any, of cash is not shown. Samuel C. Coleman, one of the respondents (110) testifies to executing the orders (110 to 118). He said (115) Browne, neither by letter or by any other means, communicated to witness any purpose not to take the delivery of these transactions. He (115) did not even know Browne, *and never had any conversations with him* (115). No member of Thorn and Maginnis ever communicated in person with Browne until (115) after February 1. Hence, the *"intention"* and *"knowledge"* are established by the *letters, telegrams and statements* and not squarely denied by any witness. *No cotton was ever delivered or received in these transactions* (117). Witness (118) has "handled" on the Exchange as many as Ten Thousand (10,000) bales of cotton. That covered a period of Five (5) hours, an average of Two Thousand (2,000) bales an hour, or Thirty-three (33) bales a minute. This witness says nothing as to his *intention* to deliver or not deliver, and nothing of *his knowledge of Browne's intention not to deliver*. Hence he makes no denial of the facts proved by the letters and telegrams. H. G. Hester produced the charter, constitution, by-laws and rules of the New Orleans Cotton Exchange (119 to 378). This witness makes no statement on the subject of respondents' intention to deliver or of their *knowledge of Browne's intention not to deliver*. Neither does the next witness, W. R. Leverich (382) make any statement on either of

those points. Charles B. Thorn, a respondent and head of the firm (400), had no personal knowledge of Browne. He made inquiry of him in a book (400-401). He admitted soliciting Browne's business, including "hedging" business. On the subject of delivery on page 416 this occurs:

"Q. Mr. Thorn, was it the *custom generally* for you as a member of the New Orleans Cotton Exchange in accepting a contract for any man for either the purchase or sale of cotton for future delivery believing at the time that he had no intention of either accepting or delivering the cotton bought or sold? A. No.

Q. Would your firm have done so? A. No."

On page 417 appears this:

"Q. What was your intention at the time you entered into contracts with *these various brokers* with reference to the circumstances of the cotton on behalf of Mr. Browne? A. To make delivery of that cotton bought and to deliver the cotton that was sold.

Q. You then expected to spot the cotton that you had contracted to buy? A. We did.

Q. And to deliver the cotton you had sold? A. We did.

By Mr. Cravens:

Q. Did you, Mr. Thorn, or anybody representing your firm, *do anything that prevented the delivery*, or prevented the fulfillment of these contracts by acts of delivery *except carrying out the instructions of Mr. Browne, the defendant?* A. We did not; they would have been received on contract *if he had held them until maturity?*

Q. That is May, you mean by maturity? A. Yes."

Thorn says the initial "sale" of September 22 (421 and 538) might have been a purchase instead of a sale. Thorn said (422) that Browne could not have bought to cover that Two Hundred (200) bales sold, and yet his own record shows that *was* done on November 10 (538). Thorn would not say he knew Browne bought to cover (423), *but he believed it.* Hence he believed there was no intention to deliver. He (Thorn) knew it was never delivered (423). Yet while Browne *sold, first,* Thorn said (423) that he knew Two Hundred (200) bales were bought to deliver; although he had just said they were bought to "cover." By looking at his books he could tell whether they owed Browne or Browne owed them on that *initial* "trade" (423). He there speaks of Browne *buying back.* If Browne bought at a lower price than he sold, Browne would "make" (423). Pages 424 and 425 show Thorn's suggestions as to hedging. There was no basis for that suggestion, because the correspondence contains no such suggestion, but contains every notice to the contrary. Thorn (425) speaks of the *"original"* purpose of cotton exchanges, but says nothing there about his lack of knowledge as to Browne's intention not to deliver. Browne *might* have been selling futures to hedge against spots. As a matter of fact, Browne was not. Thorn explains (426) that money is saved or profit or loss fixed by hedging. He says hedging is not speculating (426). "If a man is not hedging, and if he sells Two Hundred (200) bales, not having it, with the expectation of buying it back when it is lower, is he not selling it for the purpose of making profit on the fall of

the price in cotton?" (427) "A. *If he does that thing, yes.*" Browne bought and sold Four Hundred (400) January (429, 6, 530) and got a profit when he "closed out." They did not sell the Two Hundred (200) initial trade on Browne's commercial rating entirely (432). He had put up margin (432). His deposit of One Thousand Dollars ($1,000.00) had more to do with the initial trade (433). Respondents never called on Browne for a commercial statement (433). No cotton was ever delivered by Burba (434). Statements of November 10 (437) show a profit to Browne by a rise and fall in prices. The letters, confirmations and telegrams sent out were authorized (439). Thorn had sometimes to look at Browne's account to tell whether an order meant to buy or sell (445) (448). "Sell five hundred January at 17.50 stop" means to sell Five Hundred (500) bales January and then stop the loss by buying to cover at Seventeen and Fifty-hundredths Cents (17.50c) (449). "Cover" after selling means to buy back and take profit or loss (459).

The above is all of respondents' evidence on the subject of an intention to deliver and knowledge of Browne's intention not to deliver. Browne (570) on same subject said he had made one or two deals in cotton futures before that. On page 571, he said:

> "The first transaction that I ever transacted, it was necessary to deposit to their credit money required by them for margin on which they would execute these contracts or orders. There was never any credit extended, never any asked by me and there was never any intention on their part or mine

to speculate any further, or any more than the amount of money by me—"

And page 572:

"Q. Did you intend by these transactions shown in these telegrams and testified about by the witness, to comply with, or did you have any knowledge of the rules and regulations of the New Orleans Cotton Exchange? A. *I did not; I didn't know that they had a book of rules.*

Q. *Did you have any intention to receive any of the cotton at all or deliver any?* A. *I certainly did not have any intention.*

Q. *Did you have any intention to deliver any of the cotton?* A. *I did not.*

* * * * * * * *

Q. What was your purpose in selling the contracts or futures? A. *It was to speculate on the market.*

Q. What was your purpose in buying the futures or contracts that you bought? A. *I was speculating the same way.*

* * * * * * * *

Q. State what you mean by speculate. A. Well, that is a term that I have heard used in referring to buying and selling futures for speculation, in order to try to make money out of it.

Q. Go further if you can, and tell how you would make money out of it? A. *If I would buy, I would buy with the hope or prospect of cotton advancing and I could sell it at a greater price and reap a profit.* OR, IF I WOULD SELL I WOULD THINK—OR SOME TIMES THEY WOULD ADVISE ME IN THE LETTERS OR TELEGRAMS THAT IT WAS A GOOD TIME TO SELL."

He does not remember having any cotton (572). He may have been interested with renters in some cotton, not over Twenty (20) bales.

On page 573 he also said:

> "IF THE INFORMATION RECEIVED IN THE TELEGRAM WOULD CAUSE ME TO BELIEVE THAT THE MARKET MIGHT ADVANCE, OR MIGHT DECLINE, I SOME TIMES WOULD ACCEPT THAT AS A TIP TO BUY OR TO SELL AND ACT ON THOSE TIPS, I RECKON I WOULD CALL IT, ABOUT WHAT THE MARKET MIGHT DO."

This shows that he attempted to make money on the rise and fall, *acting on the suggestion of respondents.* Hence they had knowledge of his gaming, because they advised it. That is not denied. It is shown in the letters and telegrams. He was never on the exchange (376). Thorn had closed out contracts for him before (577). Had put up money at their request (577). It was optional with him. He could put up money or leave it to respondents to do what they pleased. Did not have the means to receive the cotton (578). "I thought if I put the money up, and if the market went up, it would give me a profit." (635.)

Knows nothing of orders being executed on the exchange (635). First confirmation slip received was first he ever saw. Did not understand (636) they were buying and selling *cotton. On the contrary, no cotton was ever to be bought or sold.* He said (636 and 637):

"A. It means I had a contract down there at a cost of 16 cents and closed it out at 16.05, which left a profit of $50.00.

Q. You were figuring to discover what the profit was? A. That is what that sheet says."

* * * * * * * *

"A. I don't think they have ever bought any cotton for me, or sold any, except just on the quotations there and speculations.

Q. You received notice all along from them, didn't you? A. Yes.

Q. When you wired them 'Buy four May,' did you intend for them to buy 400 bales of cotton for May delivery? A. I intended for them to buy on the market there at that price 400 bales.

Q. You intended them to do just what that telegram said? A. Yes, sir.

Q. Then you didn't think they did it? A. I think they did; I think they did exactly what I intended them to do, and what they intended."

* * * * * * * *

"A. *I don't understand that they bought any cotton in fact.*

Q. You understood they never entered into a contract with some reputable concern for the purchase of 400 bales of cotton to be delivered to you in May? A. *I didn't know how they did that until this trial came up and I heard his explanation. I expected I would put up the margin and risk that much. If it went down, I lost it. I expected they would execute their orders and if the cotton advanced I would get the profits. It was never my understanding that I would lose anything more than the margin. Nothing they ever said to me indicated it. If I lost the margin it was gone and I have no cry to make.*"

Anybody (638) can deposit a thousand dollars in the bank and ask them to execute an order and they will do it.

Page 639 he said:

"A. No, it was my understanding that was a place you could speculate down there when you wanted to. That has been my understanding all my life.

Q. You have never known the difference between a bucket shop and an exchange? A. No, I couldn't say that I did.

Q. And you never have found it out? A. No, not even now I don't know it. I don't know what you mean by bucket shop."

Page 640 he said:

"A. I knew I would be sold out, before it would reach that point they would wire me and give me a chance to put up. *If I didn't put up they would close me out.*"

The same fact is shown by Thorn's evidence.

Page 644 he said:

"A. I would not have insisted that it was a valid contract; I would have expected my profit. That was the understanding if I put up the margin they would give me the benefit of any advance in price."

Page 645 he said:

"I will do my best to explain that to you. On the morning that I received this, February 1st I wired Thorn & Maginnis to sell my cotton, ten at 17.15 and ten at 17.20. *I think in ten minutes after the time that the market should have opened that morning, they wired me that they had sold it at* 14 *cents, making a difference of some twenty-nine or thirty thousand dollars, taking up all my margin and some besides. I was, of course, naturally consider-*

*ably confused and surprised to have a telegram of that kind after having just wired them to sell at* 17.15 *and* 17.20. A while after I received the first telegram from them they began sending me telegrams to deposit this difference. I knew that my understanding was from first to last, all the letters I had ever received, and all the dealings that I had with them indicated clearly that I was to put up a margin and was not liable further than that to speculate on this market."

As to the closing out deal he said (649):

"A. *After the market opened down I certainly would have bought if I had dealt at all, and I certainly would not have been willing to turn loose of my holdings at that. In all previous instances in which the margin was being exhausted they had wired me. They could have wired me in this instance the condition of that market, and whether I wanted to let it go at that price.*

Q. Did you get any notice? A. I didn't. The first notice I got from them was the telegram saying they had sold at 14 cents and less than an hour before that I had wired them to sell at 17 cents."

In addition to the above evidence, see the actual transactions between the parties, including telegrams, letters and statements, pages 60 to 77.

## ASSIGNMENTS OF ERROR RELIED UPON IN THIS COURT.

The numerous assignments of error in the record were made necessary to avoid the waiver of petitioner's right to have the important Federal questions and other questions properly determined by this Court. The assignments of error appear on pages 26 to 50. These assignments of error preserve each of the questions involved, and discussed in the brief below.

## QUESTIONS INVOLVED.

I.

**Is the United States Cotton Futures Act invalid because it attempts to govern and regulate matters belonging exclusively to the states? (For a discussion of this see page 32 below.)**

Ia.

**Is the United States Cotton Futures Act only in part invalid, and is it valid in so far as it levies an excise tax? (For a discussion of this question see page 32 below.)**

Ib.

**If the excise provisions of the United States Cotton Futures Act are alone valid, it follows that the respondents cannot recover because they violated the valid provisions of the Cotton Futures Act. (For a discussion of this question see pages 33 to 38 below.)**

II.

**The respondents are not authorized to sell two thousand bales of May cotton at fourteen cents on the telegraphic order directing a sale of one thousand bales at seventeen and twenty one hundredths cents and one thousand bales at seventeen and fifteen one hundredths cents. (For a discussion of this question see pages 38 to 42 below.)**

III.

**The broker's slips offered in testimony fail to show a contract in compliance with the United States Cotton Futures Act, if the latter act is valid. (For a discussion of that question see pages 42 to 49 below.)**

IV.

**The meaning of the words "the party to be charged" in the Act of Congress. Under said Act of Congress "the party to be charged" refers to the principals, and not the brokers. (For a discussion of this question see pages 49 to 55 below.)**

V.

**Under the Treasury regulations, if the Cotton Futures Act is valid, the offered contracts did not comply with Section 5 of said Act of Congress. (For a discussion of this question see pages 55 to 60 below.)**

VI.

**The offered contracts or alleged contracts are illegal under the Cotton Futures Act, as well as under the rules of the New Orleans Cotton Exchange. (For a discussion of this question see pages 60 to 64 below.)**

VII.

**The undisputed and substantial evidence in the case conclusively shows that neither petitioner nor respondents intended any delivery of any cotton. (For a discussion of this subject see pages 64 to 103 below.)**

VIII.

**Respondents introduced no substantial evidence to show that they were without knowledge of petitioner's intention not to receive or deliver cotton. (For a discussion of this subject see pages 103 to 109 below.)**

IX.

**The court erred in holding in the charge to the jury that the intention not to deliver must exist in both petitioner and respondents. (For a discussion of this subject see pages 110 to 111 below.)**

X.

**The transaction was an Arkansas contract. (For a discussion of this question see page 112 below.)**

XI.

**United States courts will not enforce in the State of Arkansas a contract which is illegal under the laws of that state, even though said contract be valid in the State of Louisiana. (For a discussion of this question see page 112 below.)**

XII.

**The court erred in holding that hedging was not dealing in futures. (Page 113.)**

XIII.

**The court erred in refusing petitioner's instruction based upon the Cotton Futures Act. (For a discussion**

of this subject see page 115 below.) If the Cotton Futures Act is invalid, as heretofore contended, it will be unnecessary to consider this suggestion.

XIV.

The court erred in refusing instruction numbered 7, as printed below at page 119.

XV.

The court erred in refusing defendant's request numbered 8, which is printed below at page 120.

XVI.

The court erred in refusing instruction numbered 13, requested by plaintiff, which is printed below at page 124.

XVII.

The court erred in refusing (Instruction No. 14) to instruct the jury that what is called hedging may be gambling. (Page 125.)

XVIII.

Error in refusing instruction 15. (See page 126 below.)

XIX.

The court erred in directing a verdict on the counterclaim of petitioner in favor of respondents. (See page 126.

XX.

Error in admitting evidence to show that petitioner bought or sold or had an interest in certain bales of cotton on the broker's slips. (See page 127 for discussion.)

XXI.

Error in admitting evidence of the alleged custom on the New Orleans Cotton Exchange in the execution of a stop loss order without showing that petitioner knew of that custom. (For discussion see page 127.)

## BRIEF OF THE ARGUMENT.

I.

**The Cotton Futures Act is in part invalid especially in so far as it attempts to regulate the proceedings upon the New Orleans Cotton Exchange, and is valid in so far as it levies a tax of two cents per pound on cotton involved in future contracts.**

If this position is well taken, it necessarily follows that the respondents are denied a recovery on the ground that they knowingly violated a law of the United States requiring the payment of the excise tax. Respondents participated in the making of these contracts. In fact they actually made them. In truth, the relations between petitioner and respondents are more in the nature of purchaser and seller than they are of principal and broker. That subject is discussed elsewhere. This Court, in discussing similar facts, in the case of *Irwin* v. *Williar,* 110 U. S. 499, used this language:

> "But we are also of the opinion that when the broker is privy to the unlawful designs of the parties and brings them together for the very purpose of entering into an illegal agreement, he is *particeps criminis,* and cannot recover for services rendered or losses incurred by himself on behalf of either in forwarding the transaction."
>
> *Embrey* v. *Jemison,* 131 U. S. 336.

That sound rule has never been changed in the slightest by this Court, and is upheld by all the authorities. There is no pretense that the excise tax required

by Section 3 of the Cotton Futures Act was ever paid. There is no allegation and no evidence to that effect, and, on the contrary, all the evidence shows that the transactions were had under Section 5 of the Cotton Futures Act. That fact is shown by the brokers' slips and by every statement sent by respondents to petitioner, and by every letter or report passing between the two. This is illustrated by a report appearing on page 390 from respondents to petitioner. It is there stated that the transactions in cotton for future delivery are subject to the rules and regulations of the New Orleans Cotton Exchange and the United States Cotton Futures Act, Section 5. That statement appears in every communication from respondents to petitioner. It is respectfully submitted that under the authority of *Hill* v. *Wallace, Secretary of Agriculture*, 42 Supreme Court Rep., page 453, a case decided May 15, 1922, the Cotton Futures Act, save the sections hereinafter named, is invalid.

In that case, this Court held the Grain Future Trading Act invalid. The Grain Futures Act was passed August 24, 1921. The Act is set out in full in 274 Fed. Rep., page 1111. In all substantial particulars, the two acts are the same. In that case, this Court also referred to the case of *Bailey* v. *Drexel Furniture Company*, 42 Supreme Court Rep., page .... In the Hill case, this Court conceded the power of Congress under the Constitution to levy an excise tax upon grain contracts. Under the same Constitution and under the same decisions, Congress has the power to levy the excise tax of two cents on the price of cotton.

*Treat* v. *White*, 181 U. S. 264.
*Nicol* v. *Ames*, 173 U. S. 509.
*Thomas* v. *United States*, 192 U. S. 363.

This Court, therefore, held that contracts in future grain dealing were not interstate commerce, and, hence, the law was invalid because it attempted to regulate matters belonging purely and strictly to state regulation.

The motion to direct a verdict in favor of the petitioner made at the conclusion of the evidence raised this question. It was undisputed that the tax was not paid. If all of the Cotton Futures Act is invalid except Section 3 which levies the excise tax and Section 14 and other sections providing for the collection of the excise tax, then it would follow as a matter of law that respondents cannot recover because they were guilty of a misdemeanor in doing the very things upon which they rely for a recovery. They were principals under the United States Penal Code in the crime.

U. S. Penal Code, Section 332, 35 U. S. Stat. at Large, page 1152; 7 Fed. Stat. Ann., page 984, and cases there cited.

As before stated, the motion to direct a verdict raised the question as to the constitutionality of all sections of the Cotton Futures Act except those levying the excise tax and providing for its collection, and said motion also raised the question that upon the undisputed evidence the transaction was a gambling one and for that reason also there could be no recovery. That question is discussed elsewhere. This Court, in the case of *Hill* v. *Wallace*, just cited, refused to decide whether all

the sections of the Future Grain Trading Act, especially those levying the excise tax and providing for its collection, were valid or invalid. This Court left that question open. Upon the assumption that the Cotton Futures Act in substance is precisely the same as the Grain Futures Act, the precise question, therefore, arises in this case as to whether the excise provisions of the Cotton Futures Act remain in full force and effect notwithstanding the invalidity of the other sections.

The Grain Act has the short title of "The Future Trading Act," which title will be used hereafter. The Cotton Futures Act has the title of "United States Cotton Futures Act."

The first Cotton Futures Act was passed August 18, 1914. The one under consideration now was passed August 11, 1916. This latter Act repealed the former. The former had been held invalid in *Hubbard* v. *Lowe*, 226 Fed. 135. It was held invalid on the ground that it was a revenue act, and that it originated in the Senate and not in the House. Apparently acting upon that decision, Congress passed the Act of August 11, 1916, originating said Act in the House instead of in the Senate.

The Future Trading Act, which was held void by this Court, in Section 4, levies a tax of twenty cents per bushel. The section does not say that it is levied as an excise tax. In the Cotton Futures Act, Section 3, it is expressly stated that the two cents per pound is levied "as an excise tax." The presence of that phrase in the Cotton Futures Act and the absence of it in the Future

Trading Act adds weight to the contention that the excise tax provisions of the Cotton Futures Act are not invalid. Section 22 of the Cotton Futures Act has this provision:

> "That if any clause, sentence, paragraph or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered."

See

39 U. S. Stat. at Large, page 482.
Act of August 11, 1916.

Section 1 of the Cotton Futures Act is similar to Section 1 of the Future Trading Act. Section 2 of each Act consists of definitions to be used in construction. Section 3 of the Cotton Futures Act levies the excise tax of two cents on each pound of cotton. Section 3 of the Future Trading Act levies twenty cents a bushel on the grain. The twenty cents a bushel is far more exorbitant than the two cents on the cotton. In fact, the two cents on the cotton is not so high as to be unreasonable or unjust. Section 4 of the Cotton Futures Act requires each contract to be in writing. Section 4 of the Future Trading Act requires an additional twenty cents a bushel on every bushel of grain, except such as are included in the exceptions of that section. Section 5 of the Cotton Futures Act is somewhat similar to Sections 4 and 5 of

the Future Trading Act. Section 5 of the Cotton Futures Act also attempts to regulate the trading in cotton futures as Sections 5 and 6 of the Future Trading Act attempt to regulate the dealing in grain futures. Section 6 of the Cotton Futures Act is a further regulation by providing a method of determining values. Section 6A of the Cotton Futures Act is a still further regulation of cotton trade on cotton exchanges. Section 7 of the Cotton Futures Act provides for the designation of spot markets. That is similar to the provision of the Future Trading Act, Section 8, which provides for the designation of contract markets. Section 9 of the Cotton Futures Act contains still further regulations of the cotton business similar to the regulations in the Future Trading Act as to dealings in grain. Section 10 of the Cotton Futures Act further provides for further regulation. Section 11 of the Cotton Futures Act provides for the collection of the tax levied in Section 3. Section 12 of the Cotton Futures Act makes contracts not made in compliance with Sections 3, 4 and 11 void and unenforceable. Section 13 of the Cotton Futures Act empowers certain duties on the Secretary of the Treasury. Section 14 of the Cotton Futures Act makes it a misdemeanor to violate said Act, and is similar to Section 11 of the Future Trading Act. Section 15 of the Cotton Futures Act provides for the awarding of informers as to the violation of the Act, and makes it the duty of the United States District Attorneys to institute and prosecute actions under said Act. Section 16 provides for immunity to witnesses who testify. Section 17 provides that the

payment of the tax shall not exempt any person from any penalty or punishment provided by state laws. Sections 18 and 19 make appropriations for the enforcement of the Act. Section 20 provides that the Act shall take effect on the first day of the calendar month next succeeding the date of the passage of the Act. Section 21 repeals the prior Act, and Section 22, given above, provides that the invalidity of any section or paragraph shall not invalidate the other sections.

It is respectfully submitted that under the authority of the Hill case above cited the entire Cotton Futures Act is invalid except Sections 3, 11, 14 and 22. These sections relate to the levy and collection of an excise tax of two cents on each pound of cotton.

II.

**Respondents were not authorized to sell two thousand bales of May cotton at fourteen cents on a telegraphic order directing a sale of one thousand bales at seventeen and twenty hundredths cents and one thousand bales at seventeen and fifteen hundredths cents.**

This question was raised by an objection to testimony (72-73), and was also raised by request for a charge on the subject from the court (687). It has been held by this Court and many other courts that a custom cannot be proved in the trial of a cause like this until the evidence is first introduced showing that the party against whom the custom was used had knowledge of the custom.

*Irwin* v. *Williar*, 110 U. S. 499.
*Baxter* v. *Sherman*, 73 Minn. 434.
*Robbins* v. *Maher*, (N. D.) 103 N. W. 755.

*Ferguson* v. *Good*, 94 Va. 1, S. C. 26, S. E. 397.
*McEherry* v. *Blanchfield*, 68 Kas. 310.
*Gilmer* v. *Young*, 122 N. C. 806.
*New Roads Oil Mill Co.* v. *Kline, Wilson & Co.*, 154 Fed. 296.
*Weir* v. *Dwyer*, 114 N. Y. S. 528.
*Exchange National Bank* v. *Little*, 111 Ark. 263.

The evidence is undisputed that petitioner had no knowledge of a custom that would permit respondents to sell his cotton at fourteen cents (14c) on an order directing them to sell as above shown. In fact, the custom itself is not sufficiently proved. The evidence tends to show a custom permitting brokers on the exchange to sell or buy on a stop loss order at a figure different from that named in the order. The inference from the evidence of L. P. Barkdull, Samuel C. Coleman and Charles B. Thorn on that subject is that such custom applies when the exchange is open and when there are rises and falls taking place in the market. In the case at bar, in a number of instances (442, 443, 468, 583, 498, 499, 504, 505, 601, 602, 616, 514), the margins of the petitioner were considered too low by the respondents, and the respondents in every instance made a call upon petitioner requesting him to put up more cash, and in every instance the petitioner apparently complied with the request. The petitioner failed in only one, as the record shows (504). In that particular one, the respondents closed out some of the cotton of the petitioner, and thereby reduced his holdings, and then carried him over night. The transactions between petitioner and re-

spondents amounted to hundreds of purchases and sales. Hundreds of telegrams passed between them. The court, in his charge to the jury, refused to give any instruction on this subject. At the close of the market on January 31, cotton futures for May delivery were selling at Seventeen and Twenty-four Hundredths Cents (17.24c). It was not reasonable to expect a fall of Three Hundred and Twenty-four (324) points at the opening of the market on February 1. If that was reasonable, then the respondents had knowledge of that. They had ample time to communicate with petitioner both before the opening of the market on that day and afterwards. They knew as an absolute fact that petitioner had no knowledge as to what the opening price would be on that morning. Of course, respondents did not know. Respondents, however, were in a position to have information as to what the Liverpool market had done, and probably as to what the New York market had done. The respondents were in touch with all the cotton centers of the world. They had some knowledge, at least more than the petitioner, as to what the market would probably do on its opening on that morning. There is no evidence in the record to show that they were surprised at the enormous drop in the market. It was their duty, if they were brokers and agents of the petitioner, to keep themselves informed as to what the market would probably do on that morning, and to advise petitioner as to all the facts. Instead of that, they did nothing. They received his telegram directing the sale of the Two Thousand (2,000) bales at least Twenty-two (22) minutes

before the market opened. They could have communicated with him in two (2) minutes' time. As brokers, they owed him that duty. That issue should have been submitted to the jury. If I should be mistaken in all other contentions in the case, it does seem to be sound to say that if the contracts are valid, if there was an intention to deliver, still the duty and obligation resting upon respondents compelled them to give notice to the petitioner after the opening of the market and before they sold his cotton at such an enormous drop. They certainly owed him some duty and obligation. Cotton opened at Fourteen and Fifty-hundredths Cents (14.50c), according to the testimony of respondent Kehoe. During the day, according to the evidence of one of the respondents (101) cotton reached the price of Seventeen and Thirteen-hundredths Cents (17.13c), only two points below the figure named in petitioner's telegram. There was certainly an obligation, assuming that there was an intention to deliver, upon respondents to take reasonable care in handling the business of the petitioner. It seems to me that the undisputed evidence shows that the respondents did not use that degree of care that would entitle them to recover. The evidence of the petitioner tends to show that he would have bought cotton at Fourteen Cents (14c) instead of selling it. The evidence tends to show that he did buy some cotton on that very day (648). It is, therefore, respectfully submitted that the respondents are not entitled to recover because of their own failure to discharge a duty which they owed to petitioner, if actual delivery was intended by them. Their

commercial reports, according to respondent Thorn, gave petitioner a good rating. If the contract was valid, petitioner was able to meet the losses. If the validity of the contract, therefore, was established there was no question of the right of respondents to recover. They should not, therefore, have assumed the right to act upon a custom which was unknown to petitioner and thus sacrifice his rights *without proper authority from him.* The duties and obligations of brokers will not permit them to take such reckless action in complete disregard of the rights of their customers.

III.

**The broker's slips offered in testimony failed to show a contract in compliance with the United States Cotton Futures Act.**

As before stated, all the transactions covering January 25, 1917, to January 31, 1917, inclusive are attempted to be established only by the sold slips. See pages 76 and following. The bought slips of those transactions were not offered in testimony at all. As to the final transaction on February 1, the respondents did offer in testimony (86 and 416) both the bought and the sold slips. These are printed above. In those slips, as well as in the other sold slips covering the transactions between January 25 to January 31, inclusive, respondents were permitted orally to testify that petitioner was interested in certain sales involved in said sold slips. That question is discussed elsewhere. It was admitted in open court that the name of petitioner did not appear on any of the sold slips or any of the bought slips (79-80).

Oral testimony over petitioner's objection was introduced as heretofore stated. The argument on this point is made upon the assumption that the United States Cotton Futures Act is valid. It is argued elsewhere that said Act is invalid, and petitioner's counsel rely upon that argument. The present argument is made only upon the assumption that the court take the view that said Cotton Futures Act was valid. Under Rule 1 (227) regulation cotton future business on the New Orleans Cotton Exchange, neither the petitioner as principal nor the principal back of the broker with whom respondents dealt can be a party to the purchase and sale of cotton on the New Orleans Cotton Exchange. Under the rule referred to, both parties "shall be members of the New Orleans Cotton Exchange." Therefore, the petitioner cannot be a party to the purchase and sale of cotton on the New Orleans Cotton Exchange. The contract called for on page 227 of the transcript which is in Section 2 of Rule 1 on cotton futures on the New Orleans Cotton Exchange was never signed in any of the transactions which respondents claim they entered into for and on behalf of the petitioner. The broker's slips only were used. The Court of Appeals held that these brokers' slips constitute a contract. It may be that they did constitute a contract, but they do not constitute a contract such as is required by the United States Cotton Futures Act. The United States Cotton Futures Act requires contracts to be made in writing. That refers to the contract under Section 2 of Rule 1 (227). Therefore, by said Rule 1, the alleged brokers' slips, even if they

are contracts, have absolutely no binding force upon petitioner or any other person not a member of the New Orleans Cotton Exchange, who buys and sells cotton futures on said exchange through brokers or otherwise. It is, therefore, insisted that the brokers' slips violated the plain terms of the Cotton Futures Act. Section 4 of the Cotton Futures Act requires the contract to be in writing. The contract must plainly state the terms, the quantity of cotton involved "and the names and addresses of the seller and buyer in such contracts." That requirement of the Cotton Futures Act makes an irreconcilable conflict between said Cotton Futures Act and the rules of the New Orleans Cotton Exchange. Those rules do not require that the principals in the transaction be named in the contract. Section 4 of the Cotton Futures Act requires the names to be given. In the use of the words "seller" and "buyer," it does not seem reasonable that Congress should have intended to refer only to the brokers. It seems more reasonable to say that Congress, by those words, referred to the principals who were back of the broker. It was not the intention of Congress to validate gambling in futures. It was the intention of Congress to discourage gambling in futures. By requiring the names of the sellers and buyers to be upon the contracts, publicity would be given to the deals made in futures on the cotton exchange. That very publicity would deter gambling in futures and thus carry out one of the purposes of Congress. In the case of *Hubbard* v. *Lowe*, 226 Fed. 135, Judge Hough, in holding that that Act was invalid because it originated in the Senate, used the following language:

"As in the case cited, the legislature decided to suppress the sale of colored oleomargarine, so here it desired *to destroy every form of contract for future delivery of cotton, except that marked out by the statute*. In both instances the object was sought to be attained by a tax intended to be prohibitive; in both, the statutes are by title called tax bills, and to both the same treatment must be accorded, viz.: They are revenue bills, because Congress gives them that label and provides the machinery of levy and collection. It is immaterial what was the intent behind the statutes; it is enough that the tax was laid, and the probability or desirability of collecting any taxes is beside the issue."

It does seem, therefore, that Congress intended to strike down every contract not made in accordance with the terms of said Cotton Futures Act. If Congress had the power to regulate the cotton exchange, it had the power to require the names of the *sellers* and *buyers* and not their agents, the brokers, to be placed upon the contract. The respondents would sign the contracts in the name of their principal by them as agents. The Cotton Futures Act is a tax act. The United States Government is interested in collecting said excise taxes. By requiring the real principals to have their names upon the contracts, the United States will better be able to collect the taxes. As the contracts, meaning the slips, did not have the name of the petitioner as purchaser or seller, and did not have the name of the principal back of the other brokers upon said contracts, they, therefore, are in violation of the Cotton Futures Act, and, therefore, the respondents are guilty as a matter of law of violating said Cotton Futures Act. The respondents would, therefore,

under the very terms of that act be guilty of a misdemeanor.

United States Penal Code, Section 332, Fed. Stat. Ann., page 984 and cases there cited.

The complaint of the respondents sets out that they were the brokers of petitioner. Therefore, the petitioner was one principal and the man from whom he bought or to whom he sold, being the man back of the other broker, was the other principal. It is admitted that a deal may be made legally in the names of brokers without disclosing their principals. That is an ancient principle of law. It does not follow from that that Congress intended to legalize that kind of a transaction in dealing in cotton futures. Congress intended that the real parties, being the real seller and real buyer and not their agents should have their names on the contract. Congress desired to have a public record of every person interested in a contract dealing in futures in cotton. No reason exists why that should not be done. It does not comply with the Act of Congress merely to give the names of the brokers who were buying and selling. The concealment of the real parties, being the buyers and sellers, invites speculation with other people's money. Evidently, it was one of the purposes of Congress to require publicity so that bank cashiers and bank officers and other trustees would not use other people's money in speculation on the cotton exchanges to the great detriment and loss of their trust estates. Congress, in using the words "seller" and "buyer" used them with the ordinary accepted meaning. The seller is not the broker.

The seller or buyer is the person in whom exists the title to the cotton. The broker does not have the title. As between the brokers of the exchange, they may be principals. They are not principals, however, within the meaning of the Act of Congress. The title to the property is not in the broker.

*Richardson* v. *Shaw*, 209 U. S. 365.

The seller is the party who owns the product sold before the sale, and stands back of the broker. The buyer is the party who wants the product and takes title after the contract and stands back of his broker. Congress could have no purpose in requiring the names and addresses of the brokers. It has been held by this court that judicial knowledge will be taken of the method of conducting business on the great exchanges of the country. Therefore, this court knows that on all the exchanges and from the time of their establishment the brokers signed the bought and sold slips heretofore referred to. That has been the universal custom. The rules of the exchanges require it. Congress had in mind to change that rule. We cannot assume that Congress did a useless thing. To say that Congress intended to have the name and address of the broker in the contract is to charge Congress with doing an absolutely useless thing. Congress knew that the names and addresses of the brokers were always placed on the contract of all the great cotton exchanges of the country. Congress, therefore, cannot be held to have required a thing which has always been required. It, therefore, follows that when Congress said that the names and addresses of the

sellers and buyers should be written in the contract, Congress, necessarily, referred to the real parties in interest, and not to their mere agents, the brokers. This is made clear by the fact that the Act of Congress requires that the contract must be signed by the "party to be charged or by his agent in his behalf." The clear meaning of that is that if respondents properly sign up the written contract for petitioner, they must sign petitioner's name by them as his agent. Regardless of what other courts have held and regardless of conflicts in the decisions of the courts, in this country and in England, on the subject, the clear meaning of Congress is as above indicated. One of the purposes of Congress was to get rid of the uncertainty in a contract which did not have the name of the real seller or the real buyer. If oral testimony is permitted to establish the connection of the real seller and the real buyer, then there will take place in all cases just what took place in the case at bar. The parties will be permitted to refer to a long list of deals in futures and to select out certain ones, saying that this belongs to this man, and another belongs to another man. Such uncertainty would defeat the prime purpose of an excise tax act of Congress. The Act of Congress is broader and more far-reaching than the Statue of Frauds. Contracts in violation of the Statute of Frauds cannot be enforced for lack of evidence.

*Williams* v. *Robinson*, 73 Me. 186.

On this subject, the error of the Circuit Court of Appeals (257 Fed. 519) is based upon the erroneous reasoning that Congress was enacting a Statute of

Frauds. Congress instead was enacting a statute to destroy every form of contract for the future delivery of cotton except that contract marked out by the statute. Of course, if said Cotton Futures Act is invalid under the rule declared by this court in the Grain Future Trading Act, then all these suggestions need not be considered.

IV.

**The meaning of the words "the party to be charged" in the Act of Congress.**

The Court of Appeals, it is submitted with great respect, took an erroneous view of the meaning of these words in the Cotton Futures Act. That act, on the subject of the signature to the contract, says, "And shall be signed by the party to be charged or by his agent in his behalf." The broker, the mere agent is not the party to be charged, as between the principal and the broker, no one would call either "the party to be charged." Such words refer to the principals only. The brokers as between themselves on the cotton exchange might be regarded as the parties to be charged, but as between broker and principal, there cannot be a party to be charged. "The party to be charged" comes into being only when principals are considered. It is contended that as only members of the Cotton Exchange can sign the future contracts, it follows that the party to be charged means the broker. That is answered by observing that the contract must be signed by the party to be charged "or by his Agent in his behalf." If the real seller or real buyer on the futures market is not a member of the New Or-

leans Cotton Exchange, then some member of the exchange must sign the contract in the name of his principal by him as Agent. If a member of the exchange is, himself, actually buying or selling futures, he can then sign the contract by himself in his own name. The "floor" traders and speculators are often members of the exchange. In such cases, they sign their own contracts. As suggested, the Court of Appeals took an erroneous view of the statute because of the decisions of the courts of the country construing similar language in the Statute of Frauds. The Court of Appeals went further and held that a contract was valid if signed by only one party. The Arkansas Court holds to the contrary.

*Lee* v. *Vaughn Seed Store*, 101 Ark. 69.

Even under the Statute of Frauds, a contract cannot be enforced against the party who has not signed it.

20 Cyc. page 272.
*Marx* v. *Bell*, 48 Ala., 497.
*Smith* v. *Jones*, 66 Ga., 338.
*Brown* v. *Snider*, 126 Mich., 198.
*Wilson* v. *Louiston, Mill Co.*, 150 N. Y., 314.
*Watson* v. *Winston* (Tex.), 43 S. W., 852.

The above construction of the Act of Congress is fully confirmed by a close examination of the various provisions of the act. Section 5 exempts from the excise tax a contract if the contract complies with Section 3 and also with certain conditions named in Section 5. The contract must conform to Section 4. It must have the names and addresses of the seller and buyer. It must be made under the Treasury rules and regulations made under that act. The Act of Congress, being a

revenue act, has a further meaning. Its purpose is to collect revenue in every case where the contract is not made in accordance with the requirements of the act. In Section 2, it is provided that the tax imposed by Section 3 shall be paid by the seller. As before argued, the broker is not the seller. The seller is the man back of the broker. The tax must be paid by means of stamps which shall be affixed to the contract. The stamps must be cancelled in accordance with the regulations of the Secretary of the Treasury. Objection was made to the introduction of the broker slips on the ground that they did not comply with the Cotton Futures Act and that the excise tax had not been paid. It is respectfully submitted that the sound rule on the subject is announced by Judge Carland in the Circuit Court of Appeals in the following language:

> "Coming to the Cotton Futures Act, I may say that as the present action is not one to enforce the contracts for the purchase and sale of cotton, Section 12 of that act above quoted has no application. The serious question presented by the record is this: Laying aside the question of gambling, did the evidence offered show that the plaintiffs knowingly engaged in an illegal business or transaction in the purchase and sale of the cotton? If so, plaintiffs cannot recover and the exclusion of the evidence was not error. *Irwin* v. *Williar*, 110 U. S. 499; *Bibb* v. *Allen*, 149 U. S. 481, *supra;* In re Green, 7 Biss. 338; *Metchert* v. *Tel. Co.*, 3 McCrary, 521; *Bartlett* v. *Smith*, 13 Fed. 263; *Raymond* v. *Leovett*, 46 Mich. 447; *Cobb* v. *Prell*, 15 Fed. 774; *Steers* v. *Lashley*, 6 T. R. 61; *Everingham* v. *Meighan*, 55 Wis. 354; *Farcira* v. *Gabell*, 89 Pa. St. 89; *North* v. *Phillips*, 89 Pa. St. 250; *Ruchizky* v. *DeHaven*, 97

Pa. St. 202; *Dickson* v. *Thomas,* 97 Pa. St. 278; *Sampson* v. *Shaw,* 101 Mass. 145; *Tenny* v. *Foote,* 95 Ill. 99; *Phelps* v. *Holderness,* 56 Ark. 300.

Whether the business was illegal depends upon the fact as to whether it was conducted in violation of the Cotton Futures Act, as Section 14 of that act, above quoted, makes it a crime punishable by fine and imprisonment for any person to violate any of its provisions. There is no pretense that the tax imposed by Section 3 was paid. Section 5, however, provides that the tax need not be paid on any contract of sale, if the contract comply with the conditions named in said section. Assuming that the memorandums offered in evidence constituted the contract mentioned in the Cotton Futures Act, it appears that they contain this endorsement: 'Subject to the United States Cotton Futures Act, Section 5.' Under the law, this incorporated into the contract all of the provisions of Section 5 except sub-divisions first and second."

See 257 Fed. page 529. In addition to the above, Judge Carland also used the following language:

"I am satisfied that if the memorandums offered could be held to be the contracts referred to in the Cotton Futures Act, then they comply substantially with the provisions of Section 5, but conceding they do comply with the provisions of Section 5, it still remains to be determined, are they evidence of a contract—are they, standing alone, evidence of a written contract. The difficult question in the case is, what did Congress mean by the following language found in Section 4: 'And shall be signed by the party to be charged, or by his agent in his behalf.' An instrument in writing not signed by both seller and buyer would not constitute a contract in writing. It is provided by Rule 47 of the New

Orleans Cotton Exchange as follows:

'It shall be the duty of the seller, on the day on which transactions in contracts take place, or at not later than 9 a. m. on the following day, to furnish a contract or slip, and deliver his own already signed, and the opposite one in blank to the buyer; the latter shall then sign his contract or slip, and return it to the seller.'

Notice may be taken that this is the manner of doing business on the great exchanges of the country. Sometimes the instruments executed are called buyers' slips or sellers' slips, sometimes bought and sold notes. *Nicol* v. *Ames*, 173 U. S. 509.

The language used by Congress, above quoted, would seem to be unfortunate, as Congress could not make an instrument signed by one party only a contract.

Some courts, in deciding questions under the Statute of Frauds, have decided that a party to a contract which the law required to be in writing, who did not sign the same may enforce the contract, against the party who did, and the language used by Congress might have come from this source, but as the language, if literally interpreted, would be meaningless, because both the seller and the buyer are to be charged in any contract for the purchase or sale of cotton, I think it must be held that the language means that any party to the contract who is to be charged thereby must sign it, either himself, or by his agent. Moreover this is not a suit to charge either party to the contracts of purchase and sale."

Each party to the contract, including the broker, is guilty of a misdemeanor if he fails to pay the tax. The authorities are divided on the meaning of the words, "the parties to be charged."

29 American and English Ency. of Law, page 858.

Brown on Statutes of Frauds, Section 244.

Under the Act of Congress, the party to be charged includes both parties because the title to the property is in the seller.

*Richardson* v. *Shaw*, 209 U. S. 135.

Congress intended that a valid contract should be made; hence, it intended that both parties should sign the contract. A contract such as is contemplated in the Act of Congress cannot rest in a suspended state until one party or the other seeks to enforce it. Congress has required that it must be signed by each party in writing. It must, therefore, have an existence from the very beginning. The members of the Cotton Exchange conceded the force of this contention by themselves signing two parts of one contract. This refers to the bought and sold slips. Each party to the contract, if that means the broker, duly signed said slips. If it means the principal, neither has signed. Hence, under the Act of Congress, the contract is invalid, and its execution a violation of the law. Parol testimony cannot be admitted to show that any other party was a party to the contract.

*Smith* v. *Jones* (Ga.), 42 Amer. Rep. 72.

The written memorandum must show who are the contracting parties.

*McIlroy* v. *Seery*, 48 Amer. Rep. 110.

It is, therefore, respectfully submitted that the Act of Congress means just what it says—that the contract

must be signed by the buyer and the seller and by the principals either in person or by their agents. If the latter, it must be signed in the name of the principals by the broker as agent.

V.

**Under the Treasury regulations, the offered contracts do not comply with Section 5 of the Act of Congress.**

Respondents in the court below conceded that the courts will take judicial notice of the method of doing business on the great future exchanges of the country. That point is also conceded in the opinion of the court. The point is ruled on in this court in the case of *Nicol* v. *Ames,* 173 U. S. 509.

The contract offered in evidence does not attempt to comply with any section of the Act of Congress, except Section 5. Counsel for the respondents rely upon the treasury regulations. Assuming that the court will take judicial knowledge of the regulations of the treasury department, it is clear that the contracts offered in evidence were properly excluded at the first trial, because said alleged contracts are in conflict with the regulations of the treasury department, and hence do not comply with the conditions of Section 5. No contract that refers to any rule or regulation of the exchange, which is inconsistent with the Act of Congress, can be deemed in compliance with Section 5 of said act. This is made clear by Article 5 on page 10 of the Treasury Regulations No. 36, which said Article 5 is as follows:

> "Art. 5. No contract shall be deemed to comply with the conditions of Section 5, Section 6A, or Section 10 of the United States Cotton Futures Act so as to exempt it from taxation if it contain or incorporate therein by reference or otherwise any provision or any by-law, rule or custom of any exchange, board of trade, or similar institution or place of business, which is inconsistent or in conflict with any requirement of Section 5, Section 6A, or Section 10 of the said act, as the case may be, nor if the parties enter into any collateral or additional agreement or understanding, either verbal or written, respecting the subject-matter of such contract which is inconsistent or in conflict with any requirement of said section."

The substance of that provision is that the contract must not include in it by any reference or in any other manner, any rule or custom of any exchange which is inconsistent or in conflict with the requirements of Section 5 of said Cotton Futures Act. The said alleged contracts which are shown on pages 69 to 74, inclusive, refer to the by-laws, rules and conditions of the New Orleans Cotton Exchange. They therefore make each and every one of the rules, by-laws and regulations of the New Orleans Cotton Exchange a part of that contract. If that were not so, what is the purpose in referring in said alleged contracts to the by-laws, rules and conditions of the New Orleans Cotton Exchange? Will counsel say that the contracts are not made in accordance with the New Orleans Cotton Exchange? Certainly not. Will counsel say that these contracts necessarily include and make a part thereof each of the rules, by-laws and conditions of the New Orleans Cotton Exchange? Such was their

contention, as I understand them. In other words, they contend that these contracts are in accord with the by-laws, rules and conditions of the New Orleans Cotton Exchange, and that the rules are made a part of the contracts. Hence if the rules have anything in them contrary to the Cotton Futures Act, said contracts would not be in accord with Section 5 of said act, and hence inadmissible. The act requires the contracts to be in writing, but the rules permit verbal contracts.

Section 3 of Rule 1 (15) of said rules is as follows:

> "Sec. 3. Verbal contracts (which shall always be presumed to have been made in the form herein prescribed), shall have the same standing, force and effect as written ones (if notice in writing conforming to the requirements of Section 4 of the United States Cotton Futures Act), if such contract shall have been given by one of the parties thereto to the other party during the day on which such contract was made or the next business day thereafter."

It is therefore perfectly clear that the New Orleans Cotton Exchange expressly authorizes verbal contracts for the sale and purchase of cotton futures. As plainly as language can make it, that is in direct violation of Section 4 of the Cotton Futures Act. Said Section 4 requires the contract to be in writing. Section 3 of Rule 1 of the New Orleans Cotton Exchange authorizes the contract to be made verbally. Hence, the two are in square conflict with each other.

The regulations, being Article V on page 10 of Treasury Regulations No. 36, above set forth, were adopted by the treasury department, for the express purpose of preventing any such provisions as exist in said

Section 3 of Rule I above quoted. Therefore, Section 3 of Rule I is incorporated in said contract, and is in direct conflict with Section 5 of the Cotton Futures Act, and therefore, according to these regulations, these alleged contracts cannot be deemed to comply with the conditions of Section 5, as a matter of law. Therefore, the court at the first trial was right in excluding said contracts.

Another important reason should be considered in this connection. Article 6 of the Treasury Regulations above referred to says:

> "Any such provision, by-law, rule, custom, agreement, or understanding which in any manner takes away or impairs the right of the person obligated to deliver cotton, to tender any cotton which is of or within the grades, of the quality, and of the length of staple deliverable under a contract made in compliance with Section 5, Section 6A, or Section 10 of said act shall be deemed inconsistent and in conflict with the requirements of said sections, as the case may be."

It seems to be the purpose of the Act of Congress as emphasized in this regulation just quoted that the purchaser of cotton has the absolute right to receive the actual cotton. This right is denied by certain rules of the New Orleans Cotton Exchange. Section 2 of Rule 26 (Tr. page 24) is as follows:

> "Section 2. Any member who may find that he holds for account of various constituents, contracts, both of sale and purchase, in same month which offset each other, shall be authorized to offset and settle such contracts and to substitute there-

for other names than those to or from whom he originally sold or purchased; provided, that in such cases he shall be deemed guarantor to his principals for the strict fulfillment of such contracts, and shall be liable to them for all damage or loss they may sustain by reason of such substitution."

This rule and the treasury regulation above quoted are in conflict. That being true, Article 5 of the Treasury Regulations makes it impossible to say that the brokers' slips are in compliance with Section 5 of the Cotton Futures Act.

Section 1 of Rule 50 is likewise in violation of the Treasury Regulations and of the Act of Congress. (See page 284 of the Transcript.) That rule authorizes any party holding a contract against another to close or cancel both by giving notice in writing. These two rules deprive the petitioner of any right to secure a delivery of the cotton purchased by him on the exchange. The rule providing for the transfer of notices of delivery also destroys the alleged right of delivery. See Rule 23, page 256. This is in violation of the Cotton Futures Act, and hence the tendered slips having incorporated in them these rules and regulations, are in violation of said Cotton Futures Act. In addition to that the "ring" settlements provided for in Section 2 of Rule 50 (Tr. 284) result in a similar denial of the petitioner's right to have the actual cotton. See Section 2 of Rule 50 as amended on page 30 and page 284 of the Transcript.

The court's attention is directed to the fact that these ring settlements are not made at the prices in the contracts or brokers' slips. They are made at the prices an-

nounced by the superintendent of the exchange at 12:30 p. m. on the date on which the "ring" is made. These regulations are in conflict with the Cotton Futures Act, and also in conflict with the treasury regulations, and hence make the contracts offered in testimony illegal and void, thereby precluding a recovery by the respondents. These facts show that there was no intention to deliver actual cotton. Hence the transaction is illegal and void.

*Pate* v. *Wilson Bros. Mercantile Co.* (Tex.), 208 S. W. 235.

VI.

**The offered contracts or alleged contracts are illegal under the Cotton Futures Act as well as under the rules of the New Orleans Cotton Exchange.**

The petitioner especially relies upon Sections 3, 4, 5, 11, 12 and 14 of the said Cotton Futures Act for the purpose of showing that the facts in the case at bar establish as a matter of law the illegality of the offered contracts.

In the construction of these sections, of course, it is necessary to consider all of the sections of the Cotton Futures Act. See Fed. Statutes annotated 1918 Supp. pp. 359-368, which is the act of August 11, 1916. It is not pretended in the case at bar that the revenue of two cents per pound was paid on these contracts. In addition to what has been said above with reference to the insufficiency of the brokers' slip, I wish to call the court's attention further to Section 4 above set out. Each contract of sale (meaning each sale, each agreement of sale

and each agreement to sell) must be in writing. In Section 4, Congress seems to have had in mind a written contract covering a sale, an agreement of sale, and an agreement to sell, and also a written memorandum. Section 4 is in the alternative. The contract must be in writing "or evidenced by written memorandum." Therefore, it is plain that Congress intended that the contract or written memorandum should be signed by both parties and not by the agents or brokers only unless in the name of the principal by the agent or broker. If it is not signed by both parties, it is not an enforceable contract against either. The prime purpose of Congress was to have an enforceable contract against each principal.

The United States Government is not an interested party as to whether one party may sign and the other accept, giving the right to the latter to enforce against the former, but giving the former no right to enforce against the latter. These suggestions under this paragraph as to the account are made merely as an introductory to further suggestions on the requirements of the rules of the New Orleans Cotton Exchange and the regulations of the Treasury Department. It seems to be the meaning of rule one (see page 227 of the Tr.) that both parties must sign the contracts. Section one of rule condemns all contracts "unless both parties there to shall be full members of the New Orleans Cotton Exchange." It seems to be the meaning of that rule that both parties must, therefore, sign the contracts. Evidently Congress had knowledge of that rule when it

passed the Cotton Futures Act. Hence the Cotton Futures Act was passed with the knowledge that both parties to the contract of sale must sign said contract. The form of the contract is provided in Section 2 of Rule I. There is no pretense by the respondents in the case at bar that they complied with that form of contract. That form (227) is on page 13 of this brief.

It will be observed that it is expressly provided in this contract that it is made subject to the United States Cotton Futures Act, Section 5, (Section 5 being invalid (*Hill* v. *Wallace*) the contract is invalid,) and the by-laws, rules and conditions of the New Orleans Cotton Exchange. It may be contended, however, that the Act of Congress provides for a memorandum of the agreement, but there seems to be a grave question as to whether the brokers' slip may be considered or taken for the memorandum required under Section 4. It seems reasonable to say that the written memorandum required by Section 4 is more formal than the brokers' slip which is used. In addition to that Section 2 of Rule I above quoted, expressly requires that the contract for the purchase and sale under the Cotton Futures Act shall be in the form required. Section 3 of Rule I authorizes verbal contracts. These verbal contracts are to be evidenced by brokers' slips. Brokers' slips, however, are not formal contracts, within the meaning of Section 4. Section 4 of the Cotton Futures Act seems to require the memorandum to be made at the time of the sale or at the time of the agreement of sale or at the time of the agreement to sell. Section 3 of Rule I (227) permits

a verbal contract at that time and then authorizes notice in writing of said contract. Hence that rule does not require the terms of the contract to be in writing. A notice is not a contract.

In addition Section 4 of Rule I (227) provides that the parties to the verbal contract may execute their brokers' slips on the next day. The Act of Congress does not seem to give that power. Rule II (229) of the Cotton Exchange, directs that every order given by a customer of a broker shall be given with the understanding that the order shall be executed in accordance with the rules and by-laws of the exchange and of the United States Cotton Futures Act. It would seem to be the purpose of the Cotton Futures Act to require a plain written contract signed by both parties and yet the rules permit an oral contract and brokers' slips and also permit ring settlements and other settlements other than the actual delivery of the cotton. It does not seem to me that the brokers' slips referred to in the Cotton Exchange rules mean the same thing as the written memorandum required in Section 4 of the Cotton Futures Act. In addition to the ring settlement the rules (20 and 21) permit settlements by transferring notices from purchaser to buyer and buyer to purchaser, thus off-setting one trade against another, resulting in fulfilling or completing all contracts without any delivery of any cotton whatever. This seems to be in contravention of the intention of Congress. Rule 47 (274) expressly provides the form of the slip. In addition to that Rule 47 seems to require the contract to be signed by both parties, the

same as Section 1 of Rule I. Under Rule 47, all slips or contracts must be signed by the members themselves or the firm. That necessarily means that there must be one slip which has all the elements of a valid contract or there must be one contract signed by both parties, and if that is not its meaning, then it necessarily follows that there is no contract even under the rules. This confirms the argument heretofore made that the bought and sold slips are necessary to complete the contract and that they must contain the names of the principals. It is my view that the question is a grave one, as to whether these slips amount to contracts. Even if they do they must be signed by both parties or else there must be separate ones, each being a part of the whole, one being signed by the buyer and the other being signed by the seller and connected with some writing, because if the connection rests in parol the whole contract is not in writing. There is no writing connecting the bought and sold notes and hence no contract in writing.

VII.

**The undisputed and substantial evidence in the case conclusively shows that neither petitioner nor respondents intended any delivery of any cotton. This is true notwithstanding the statements of two or three of respondents that the contracts called for delivery, and that delivery was intended. The letters, telegrams and reports cannot be denied, and they show beyond controversy that respondents did not intend any delivery. The directed verdict should, therefore, have been given because the undisputed evidence shows a gambling venture.**

This point requires a careful analysis of the evidence. The respondents, in bringing their suit, did not limit their claim solely to the transactions occurring between January 25 and February 1. If they had attempted so to limit their transactions, they should not have succeeded for the reason that all the transactions from the beginning to the close are admissible for the purpose of determining whether respondents intended delivery of cotton. Petitioner testifies that he did not intend any delivery or receipt of cotton, and that he was speculating on the rise and fall of prices in futures. See page 637. There is nothing in the record to contradict his intention (572). The petitioner was not hedging (572). It is absurd to suggest that he was hedging because during the entire season beginning September, 1916, and ending the next summer he could have owned as rent from his farms only about twenty (20) bales. It is, therefore, unbelievable to say that in buying twenty-seven thousand, seven hundred (27,700) bales, he was hedging against twenty (20) bales. It is submitted that the evidence of the petitioner, that he was buying and selling futures for speculation in order to make money out of the rise and fall of prices, is thoroughly corroborated by the written communications coming from respondents to the petitioner. These written communications will be noticed below. Before discussing that evidence, it is desired to call the court's attention to the law. If the respondents knowingly engaged in a gaming transaction or a gambling contract, and if they knew that the petitioner did not intend to receive or deliver any of the cotton, then they cannot recover.

*Irwin* v. *Williar*, 110 U. S. 499.
*Bibb* v. *Allen*, 149 U. S. 481, *supra*.
*In re Green*, 7 Biss. 338.
*Metchert* v. *Tel. Co.*, 3 McCrary, 521.
*Bartlett* v. *Smith*, 13 Fed. 263.
*Raymond* v. *Leovett*, 46 Mich. 447.
*Cobb* v. *Prell*, 15 Fed. 774.
*Steers* v. *Lashley*, 6 T. R. 61.
*Everingham* v. *Meighan*, 55 Wis. 354.
*Farcira* v. *Gabell*, 89 Pa. St. 89.
*North* v. *Phillips*, 89 Pa. St. 250.
*Ruchizky* v. *DeHaven*, 97 Pa. St. 202.
*Dickson* v. *Thomas*, 97 Pa. St. 278.
*Sampson* v. *Shaw*, 101 Mass. 145.
*Tenny* v. *Foote*, 95 Ill. 99.
*Phelps* v. *Holderness*, 56 Ark. 300.

When this case was first before the District Court, petitioner introduced no testimony.

See 257 Fed. 519.

The court excluded all the evidence on the ground that the respondents had not complied with the Cotton Futures Act, and thereupon, upon motion of petitioner directed a verdict in his favor. Upon a retrial of the case, the petitioner testified, and there was introduced through him and Thorn, one of the respondents, and some other witnesses, substantially all the telegrams and letters passing between the parties. It is by these letters and these telegrams which characterize the transaction between the parties that the knowledge is absolutely imposed upon the respondents as a matter of law that there was no intention on either side to make any delivery of cotton sold. Regardless of whether the Cotton Futures Act was violated by the respondents, from the undis-

puted evidence in the letters and telegrams, the transaction is a gambling venture. The courts will not lend their aid to a recovery based upon losses arising out of gambling transactions.

*King* v. *Johnson*, (Cal.) 157 Pac. 531.
*Irwin* v. *Williar*, 110 U. S. 499.
*Embry* v. *Jemison*, 131 U. S. 336.
*Bibb* v. *Allen*, 149 U. S. 481.
*Medlin Milling Co.* v. *Moffett Commission Co.*, 218 Fed. 686.

It was clearly not the intention of Congress, in passing the Cotton Futures Act, to validate gambling in futures in the cotton exchanges. It was not the intention of Congress to encourage the reckless gambling in dealing in cotton futures. In all cases where the understood purpose of transactions on the cotton exchange is to win or lose money on the fluctuations of the market, and not to deliver or to receive the commodity, the transactions are illegal.

*Bardridge* v. *Cutler*, (Ill.) 48 S. E. Rep. 125.
*Arthwine Natchette Investment Co.* v. *Maforlan*, (Kan.) 144 Pac. 482.

In the last case, the court used this language:

> "It requires too great a strain upon the credulity of courts to say that they must presume that the parties intended to make an actual sale and delivery of grain."

Even if the burden is upon the petitioner, he has fulfilled that burden by the introduction of the letters, telegrams and documents discussed below. The Kansas

case in some respects is similar to the case at bar. The brokers had aided in the transaction, and had advised and counselled with the principal. The court said:

> "And when the plaintiff in error or its agent aided him (defendant) in the transaction and helped him to carry out the transaction in this illegal way, it is idle to say that the plaintiff in error did not know what the intention of Cruse was."

At this point, I trust it will not be out of order to call the court's attention to the intense interest which respondents had in the business of the petitioner. Respondents admit that the petitioner bought and sold twenty-seven thousand, seven hundred (27,700) bales of cotton in four (4) months. The respondents were entitled to a commission on the round transaction of fifteen dollars ($15.00) per hundred bales. Therefore, in the four (4) months, October and January inclusive, the respondents' profit would amount to the sum of four thousand, one hundred and fifty dollars ($4,155.00). Thorn (427) testified that the respondents had over a hundred customers. Out of this one customer, the petitioner, they were making one thousand dollars ($1,000.00) per month. If they made one-half of that out of their one hundred customers, they would necessarily make more than fifty thousand dollars ($50,000.00) per month. This, of course, is their gross receipts. It can, therefore, be readily understood why respondents would send their representatives throughout the southern states, and probably other states, to secure "future" business. The respondents were, therefore, necessarily intensely

interested in holding the dealing in futures by the petitioner, as well as holding the similar business of their other one hundred to one hundred and fifty customers.

I wish to call the court's attention to some further decisions before discussing the facts. In the case of *Stafford Co. Grain Co.* v. *R. M. & E. Co.* (Kan.), 146 Pac. 1139, the court said:

> "It will not do to attach too much weight or importance to the mere form of the instrument, for it is quite certain that parties will be astute in concealing their intention and the real nature of the transaction, if it be illegal. It may safely be assumed that parties will make such contracts valid in form; but courts must not be deceived by what appears on the face of the agreement."

The language of the Kansas court (146 Pac. 1139) applies to the facts in the case at bar. Respondents, through their counsel, attach great importance to the testimony of respondent Thorn, as to *his*, alleged intention to deliver the cotton. It is submitted that a study of his testimony shows that he does not support the contention that he intended to deliver any cotton to petitioner, and that he does not deny his knowledge of Browne's intention not to deliver.

The first evidence of Thorn on the subject appears on page 416. His counsel's question is as follows:

"Mr. Thorn, was it the custom generally for you as a member of the New Orleans Cotton Exchange, in accepting a contract for any man, for either the purchase or sale of cotton for future delivery, believing at

the time that he had no intention of either accepting or delivering cotton bought or sold?"

Thorn answered that question in the negative. It is difficult to see in that question and the answer any evidence that Thorn intended to receive cotton from petitioner or to deliver cotton to petitioner. It is more difficult to see in it any intention on the part of the principal back of the brokers with whom Thorn dealt, any intention to deliver. It is a statement weak in probative force, and apparently means that it was not Thorn's *custom to believe* that his customer was without an intention to deliver. On the succeeding page, 417, appears this question from his counsel:

> "What was your intention at the time you entered into contracts with these various brokers, with reference to the circumstances of the cotton on behalf of Browne?"

Thorn answered that as follows: "To make delivery of that cotton bought, and to deliver the cotton that was sold."

Then follows:

> "You then expected to spot the cotton that you had contracted to buy? A. We did.
>
> Q. And to deliver the cotton you had sold? A. We did."

It is submitted that that testimony does not show an absence of *knowledge* on the part of Thorn that Browne did not intend to deliver or receive the futures dealt in. Thorn is asked what was his intention in the contracts with the brokers. Regardless of whether there

was an intention to deliver that cotton or not, the Exchange would enforce the agreements between its members. The question relates to his intention in the bought and sold slips between him and other brokers. *He is not asked as to his knowledge of Browne's intention not to deliver.* If these questions and answers mean that he intended to deliver cotton on any contracts that he carried to maturity, and received cotton on any purchases that he carried to maturity, still said questions and answers have no probative force as to his knowledge of Browne's intention. If he had knowledge that Browne did not intend to deliver or receive the cotton, he cannot recover. *In addition in every deal petitioner sold or bought to cover every purchase or sale made by him before the maturity of the "contract" arrived.* This fact was known to respondents. That certainly shows no intention by Browne to deliver, and further shows that respondents had knowledge of that.

In *Phelps* v. *Holderness,* 56 Ark. 300, a case very much like the present one, the Arkansas Court said,

> "When Holderness' margin was absorbed, demands for additional margins were made by Phelps, and when at last Holderness declined to furnish any more funds, nothing was said about delivering the supposed cotton and demanding the price, as in a contract to deliver the commodity sold, but he was promptly 'closed out' and a demand for the difference between the contract and market prices was made upon him. It is that difference that is the subject of this suit. These facts and circumstances afford evidence of a contract for the payment of the difference between the rise and fall in the price of

cotton. A venture upon the turn of prices of any commodity is simply gambling—gambling of the radical difference between the two is the method of the deal only. Phelps was privy to the gambling contract—a *particeps criminis*—and can recover no losses incurred in forwarding the transaction. *Fortenbury* v. *State*, 47 Ark. 188. *Irwin* v. *Williar*, 110 U. S. 499."

See also the following:

*Weare Com. Co.* v. *People*, 209 Ill. 528.
*Jamieson* v. *Wallace*, 167 Ill. 388.
*Bernard* v. *Backhous*, 52 Wis., 593.

In some of these cases, the courts say that it is the duty of the courts to scrutinize closely the transactions made by those who deal in futures and look beyond and behind the mere form of the agreement, and at the circumstances connected with it.

See also the following:

*E. O. Standard Milling Co.* v. *Flower* (La.), 15 So., 16.
*Connor* v. *Robertson* (La.), 55 Am. Rep., 521.
*Williamson* v. *Majors* (5th Cir.), 169 Fed., 754.

That Williamson case was almost exactly like the case at bar. The communications, letters, form of telegrams and method of conducting business was very similar. The court suggested that actual delivery might be exacted by the members of the New Orleans Cotton Exchange as between each other, but the court did not find that the customer could demand and secure actual delivery in the courts. This suggests a question which will be discussed below.

See also:

*Bibb* v. *Allen,* 149 U. S. 481.
*Board of Trade* v. *Christie Grain Co.,* 198 U. S. 236.
*Waldron* v. *Johnson,* 86 Fed., 757.
*James* v. *Clement,* 223 Fed., 385.
*Carpenter* v. *Beal-McDonald & Co.,* 222 Fed., 453.
*Wolf* v. *Andres* (Tex.), 196 S. W., 266.
*Kirkpatrich* v. *Richter* (Ga.), 91 S. E. 51.
*Orbis Bros.* v. *Holt-Morgan Mills* (N. C.), 91 S. E. 948.
*Cohn* v. *Brinson* (Miss.), 73 So., 59.
*Harnett* v. *Wilson* (Calif. App.), 161 Pac., 281.

Keeping in mind the above principles of law, as settled by this and other courts, a consideration of the undisputed evidence leads the mind inevitably to the conclusion that the facts establish beyond controversy that *the respondents had knowledge that no intention to deliver existed.* In the evidence of Thorn, Coleman, and Kehoe, it is contended that they intended delivery. Their intention is immaterial. They were the agents and representatives of the petitioner. The petitioner's intention was the intention of his agents. Even if they (respondents) intended delivery on some trade not cancelled by a ring settlement or by the scheme known as the transfer of the notice of delivery, or some other method *that* intention did not affect this transaction.

For the purposes of this case, we may waive the question as to whether the intention of petitioner must be held as a matter of law to be the intention of the respondents. If the substantial evidence in the case shows

beyond question that respondents knew that there was no intention to deliver the futures dealt in, then the court below should have directed a verdict in favor of the defendant. There are two phases to the question. In some parts of the record and at some turns in the trial, the respondents regard themselves as dealing with petitioner as though the respondents were sellers or buyers and as though the petitioner was on the other side of the transaction as a buyer or a seller. In other parts of the record, the position of respondents is that they were brokers and were merely the agents of the petitioner; that they had no interest in the rise and fall of prices other than their commissions; and that the contracts and rules of the New Orleans Cotton Exchange contemplated delivery, and they, therefore, asserted that delivery was intended; and that they were uninterested except as brokers. If the substantial evidence on the subject of intent conclusively shows that at the time of the transactions, regarding respondents as dealers on the opposite side of the trade with petitioner, that there was no intention to receive or deliver the cotton on the part of the respondents, then the cause must be reversed because of the court's error in refusing to direct a verdict in favor of the petitioner. On the other hand, if the respondents were mere brokers, and if they had knowledge that there was no intention to deliver on the part of the petitioner, then the transaction was illegal and they cannot recover because they are principals in violating the law. It, therefore, becomes an important inquiry as to what the intent of the respondents was, if they were buyers and sellers, and as to what

their *knowledge* was if they were mere brokers. This intent is not to be determined by the evidence of Miles J. Kehoe, Charles B. Thorn and Samuel C. Coleman, members of respondents' firm, given at the trial some three years after the occurrences for that evidence is directed to an absence of an intent on *their* part, and not to an absence of *knowledge* of petitioner's intent. The evidence given at the trial by the respondents to the effect that delivery was intended is exceedingly weak, and is not sufficient to show an intent to deliver, and utterly fails to show an absence of knowledge of respondents of petitioner's intent not to deliver. In discussing the question, I am assuming that the burden of establishing the intention not to receive or deliver is upon the petitioner. Respondents rely upon the rules of the New Orleans Cotton Exchange. It is submitted that these rules taken in connection with the undisputed evidence and the telegrams and letters referred to below demonstrate that there was no intention to deliver.

**The absence of a right in the petitioner to enforce delivery of the cotton tends to show that there was no intention to deliver.**

Under Section 1 of Rule I (227) of the Cotton Exchange, it is declared that no contract can be enforced by any person who is not a member of the Exchange. Both parties to any contract shall be full members of the Cotton Exchange. It is conceded that petitioner was not a member of that Exchange. It is, therefore submitted that he had no right to enforce either against respondents or the unknown principal on the other side

or the brokers on the other side any contract made in his behalf. This tends to show that respondents knew that petitioner could not enforce any contract made between him and an unknown principal or between him and respondents or between him and the brokers on the other side of the transaction. In addition, the very concealment from the trade of the principals in the contract tends to show that everybody knew that there was not to be any delivery. There can be no delivery to an unknown principal. As no delivery was intended by any of the parties, Section 4 (229) of Rule I of the Cotton Exchange does not aid in establishing any intention to deliver. Under that Rule, the seller, which is the broker, according to the contention of the respondents, in each contract must deliver to the buyer a legally stamped memorandum or transcript of sale, as required by the Cotton Futures Act. Under Rule 2 (229), it is provided that every order written or verbal given to a member of the New Orleans Cotton Exchange to buy or sell a contract for future delivery of cotton shall be agreed to be subject to the by-laws and rules of the New Orleans Cotton Exchange and subject to the United States Cotton Futures Act on and after February 18, 1915. The evidence discussed below, as I view it, conclusively establishes the fact that that rule was knowingly and wilfully violated by the respondents. Section 2 of the same rule (229) makes every provision of the Cotton Futures Act a part of the contract. As elsewhere shown, the Cotton Futures Act and the regulations made in pursuance thereof deny the right to make a verbal contract. Section 3

of Rule I (228) permits a verbal contract. The rules, therefore, are in conflict with the Cotton Futures Act, and, hence, it is doubtful whether any intention to deliver can be inferred from the rules even when literally construed.

**The undisputed evidence in the way of letters, telegrams and statements from respondents show beyond question the absence of an intention to deliver. (See statement above pages 17 to 38.**

On this point, respondents attempted to show an intention to deliver by the evidence of the Secretary of the Cotton Exchange (119). It was through this witness, Henry G. Hester, that the rules, constitution and by-laws of the Cotton Exchange were introduced. This witness (256) attempted to show an intention to deliver on the part of somebody by referring to Rule 23 found on page 256. A careful consideration of this rule considered in connection with the evidence in the case would seem to indicate the absence of any intention to deliver the actual cotton. *The opportunity is given to evade the delivery of cotton.* Under Section 2 of Rule I (227), the right is given to the seller to make delivery from approved storage places for cotton in the port of New Orleans between the first and last days of the delivery month. The said rule provides for the right of delivery as provided in Rule 40. For Rule 40, see page 270. The contract itself (228) contains the provision that cotton may be *dealt with* or may be delivered. The phrase "the cotton to be dealt with" seems to negative the idea of delivery. If delivery was intended in the transactions,

why does the contract provide for dealing with cotton without delivery, and then also provide for delivery? The fact that a right of delivery is provided for in the contract is counter-balanced by the further provision that cotton may be dealt with without delivery or any intention to deliver. The provisions of the contract and of the rules of the Cotton Exchange relating to delivery are for the purpose of giving the brokers on the Cotton Exchange an opportunity to demand delivery, but that does not show an intention to deliver. The provision of Section 2 of Rule 15 (244) provides for settlements of grade differences in the liquidation of a future contract.

Returning to the evidence of Mr. Hester and Rule 23, upon which respondents rely to show an intention to deliver: Under that rule, it is provided for notice to be given by the seller, if required by a contract. That indicates that a contract may be so made as to dispense with notice of delivery. There is no notice of the delivery in any of the brokers slips introduced in this case. No contract is offered which provides for any notice of delivery. In addition, the complicated requirements of said Rule 23 (256) seem to negative the idea of an intention to deliver. The notice must be given on the fifth business day prior to the date of delivery on the opening of the "future" business. That rule must be observed except when delivery is to be made upon the last day of the month. In the latter case, notice of the delivery must be given by the seller before fifteen minutes after 12 o'clock noon on the last day of the month upon which transferable notices may be issued. This indi-

cates that a transferable notice may evade or avoid delivery. The buyer receives a notice from the seller and in order to evade delivery from the latter, the buyer has the right simply to transfer that notice to someone else. The notice can thus run from broker to broker until it returns back to the party who gave the notice. Such a practice precludes delivery and necessarily shows an absence of intention to deliver. Rule 23 expressly provides that the buyer receiving the notice may transfer to another and it may go on from transferee to transferee. Each transferee has twenty minutes in which to transfer to someone else. Every person receiving the notice shall endorse upon it the time of the receipt. It seems absurd to assert under those circumstances that an intention to deliver under the circumstances exists. Any person failing to forward the notice within fifteen minutes is liable to a penalty of a one-fourth (¼) of a cent per pound in favor of the party with whom *the notice may lodge at the close of the day*. This rule provides for streams of notices to be transferred from broker to broker resting ultimately it may be with the party who gave the notice. In the same rule, we have this significant language:

"All differences thereon to be paid as provided for in Rule 50 for payment of *ring settlements*."

Rule 50 (284) makes contracts for future delivery binding upon the *members*. Under that rule, said contracts are in full force and effect until the quantity and quality of cotton specified in such contracts shall have been delivered and the price specified in said contracts shall have been paid. These are the rules under which

respondents claim that they have paid out for the use and benefit of petitioner the amounts named in their account. See pages 6 and 7. Construing the two rules together, the right of delivery, according to the rules, would seem to be there, *but the right to evade delivery is also there.* Delivery may be easily defeated, therefore, by the transfer of the notice. The right to transfer the notice is a right to evade delivery, and, hence, it would seem that there was an absence of an intention to deliver. The real truth is that the rule is simply placed there in order to give the "contracts" the appearance of legality. While Rule 50 states that no contract shall be entered into with any stipulation or understanding between parties, meaning the brokers, at the time of making such contract, that the terms of said contract are not to be fulfilled, and the cotton received and delivered, yet the provision is modified by the right of evading the delivery, which is made a part of the same rule. The right is given to any party to a contract to cancel the right of delivery by giving notice in writing to the opposite party at any time before the notice of delivery. Therefore, the right of cancellation nullifies the notice of delivery, and, hence, properly construed, an absolute intention to deliver cannot be found in the contract. The rule does say that no contract may be entered into unless delivery is intended. In the same breath, however, the contract gives the right to the party to nullify the right of delivery before giving the notice of cancellation. In addition, Section 2 of Rule 50 expressly provides for ring settlements. Ring settle-

ments deny a right of delivery. In other words, ring settlements exclude an intention to deliver.

It is submitted that the evidence of Hester tends to show that delivery is not possible, and, hence, cannot be intended. The transferable notices, which are for the purpose of evading delivery, according to this witness, circulate from broker to broker, and may be finally cancelled by the party issuing the notice. The witness then refers to Rule 50, reading a part of it. He there shows what he claims to be a legal off-set. In other words, the contracts cancel each other. All brokers deal with that knowledge and, hence, the facts tend to show the absence of any intention to deliver. All the transactions are made based upon the right of cancellation and the right of transfer of the notice. They are drawn so skillfully that the transfer of the notice and the right of cancellation become superior to the right of delivery. This evidences the absence of an intention to deliver. In truth, it is submitted that the evidence of this witness tends to show that there is no intention to deliver in the great mass of the transactions had in the Cotton Exchange. The witness then refers to "settling on differences Simon-pure." He then states that "gambling on differences is absolutely prohibited, but you can make a legal off-set, or just as I have said, the two ways of settling contracts." Properly construed, that evidence indicates that the trades are made without expectation of delivery, but are made with a view of cancellation, off-sets and transfer of notices of delivery. The witness declines to call that the absence of an in-

tention to deliver, but the meaning of his words carry the conviction that an intention to deliver is not present, although in language the rules prohibit gambling on differences. It is submitted that the rules do not specifically prohibit gambling on differences. On the other hand, they authorize the gambling on differences by authorizing the transfer of notices from one to another and the cancellation of notices, thus evading any delivery of the futures dealt in. It is sufficient to say that the uncertainty of that evidence at least does not show an intention to deliver. The evidence becomes still further important by the reference by this witness to Rule 18, page 156. See record page 320. The witness seems to construe that rule to mean that "bucket-shops" are prohibited, and, hence, gambling transactions are prohibited. *The rule does not have the meaning given it by this witness.* The rule (320) prohibits any member of the New Orleans Cotton Exchange from being interested in or associated in business with bucket-shops. The rule does not have the meaning that there must be an intention to deliver in every contract for future delivery on the Cotton Exchange. The rule prohibits members from accepting orders from bucket-shops and executing orders from bucket-shops and from having any connection with bucket-shops. In addition, the rule authorizes a member to deal with bucket-shops provided there exists a bona-fide purchase and sale of property for actual delivery. It is a contradiction to say that there can be an intention to deliver in any contract with a bucket-shop. It is, therefore, submitted that the evidence of

the Secretary of the Cotton Exchange does not establish the presence of an intention to deliver even in contracts between brokers on the Exchange.

THE ABSENCE OF AN INTENTION TO DELIVER IS ALSO SHOWN BY THE EVIDENCE OF THE RESPONDENTS.

On page 386, it appears that the respondents, on February 1, 1917, purchased Eleven Thousand One Hundred (11,100) bales of cotton. On the same day, they sold Twelve Thousand One Hundred (12,100) bales. It is, therefore, probable that there was sold on the New bers of the New Orleans Cotton Exchange 470 to 480 of them did equally that amount of business on that day. It is fair to say that probably every firm who were mem-Orleans Cotton Exchange on that day somewhere between Two and One-Half Million (2,500,000) bales and Three and a Half Million (3½ million) bales. If the latter figure was the correct amount, One-Fourth (¼) of the cotton crop of that year was bought and sold on that day on the exchange in New Orleans. To say that there was an intention to deliver under those circumstances is to make a statement which cannot under any circumstances be accepted. To say there was to be a delivery on the "bales" not "rung" out avails nothing. On page 416 of the record, Mr. Thorn, one of the respondents, was asked whether it was the custom generally for him as a member of the New Orleans Cotton Exchange, in accepting a contract with the belief that the man had no intention to either accepting or delivering the cotton. That statement really

has no probative force in favor of the respondents. On the next page, however, (417) and after it had been shown that the respondents sold more than Twelve Thousand (12,000) bales of cotton, on February 1, this witness states that it was *his* intention as between him and other brokers to make delivery of the cotton bought and to deliver the cotton that was sold. *He does not* say, however, that he had no knowledge of Browne's intention not to deliver. It requires a great strain upon the mind to accept Thorn's statement in the sense in which respondents intended it now. Literally construing it, it would mean that the respondents intended to deliver under deals made on February 1, Twelve Thousand One Hundred (12,100) bales. It would also mean that they further intended to receive Eleven Thousand One Hundred (11,100) bales. If they intended delivery of that quantity of cotton in one day, then they intended delivery on every deal made throughout the year. Assuming that the Exchange was open Three Hundred (300) days out of the year, the evidence of this witness would, therefore, mean that *his firm* intended to deliver during the year Three Million Six Hundred and Thirty Thousand (3,630,000) bales of cotton. It was, therefore, his intention to deliver a little more than one-third (1/3) of the actual cotton grown in the United States. Such a statement becomes an absurdity, and it is impossible to understand how the same can be accepted as having any probative force whatever. It is not the purpose of the writer of this brief to place before this court simply an issue of fact.

The court is the judge of the sufficiency of the evidence. In determining that sufficiency, the intention of the witness may be looked to. That is not exclusively a jury question. The account between petitioner and respondents shows that respondents were making out of the business of petitioner more than One Thousand Dollars ($1,000.00) per month. The evidence of the witness Thorn (427) also shows that the respondents had between One Hundred (100) and One Hundred and Fifty (150) customers. It is fair, therefore, to assume that out of that business they were making anywhere from Fifty Thousand Dollars ($50,000.00) to One Hundred Thousand Dollars ($100,000.00) a month. They say they were not interested in the rise and fall of prices. The undisputed evidence, however, shows that they make their money only by the rise and fall of prices. In the absence of a rise and fall of prices, there would be no trades and hence no commissions coming to them.

With the above suggestions in mind, it is desired to call the court's attention to the declarations, statements, letters and documents of respondents made at the time that the deals were being carried on. The initial trade was made September 22, 1916 (419). This was a "bear" transaction. It was made after petitioner had deposited in the bank of Crowder One Thousand Dollars ($1,000.00) to the credit of respondents. It is submitted that the letter of respondents concerning that initial trade is almost conclusive evidence that respondents knew that petitioner intended no delivery. The

respondents knew that petitioner had no cotton to sell. They knew he was a farmer and a stock raiser, with his farms at Crowder, Oklahoma, and his residence at Fort Smith, Arkansas. It is suggested by Mr. Thorn (424 and 425) that the petitioner might have been hedging. Many things might be conjectured. The undisputed evidence shows that the petitioner was not hedging. The letter (419) advises that respondents sold the Two Hundred (200) bales of May cotton at Sixteen and Forty-Hundredths Cents (16.40 cents) per pound. They refer to the order as an *initial* order, which shows that no previous order had been given either of sale or purchase. The respondents were bound to know, therefore, by that order that petitioner had sold the Two Hundred (200) bales of cotton believing that cotton would fall in price, and that he would make money thereby. If they did not know it at that time, the hundreds of transactions named below gave them absolute knowledge of that fact afterwards. The respondents expressed great pleasure in placing petitioner's name on their books, and hoped that that initial deal "is but the beginning of a mutually satisfactory business relation." It seems absurd that that business relation could be anything but gambling in futures. They knew from the commercial reports that petitioner was a farmer and stock raiser and probably a merchant. They would necessarily know that he was not a cotton spinner nor an exporter of cotton. He was not accumulating cotton. Hence, they are bound to know that he had no intention to deliver. Mr. Thorn when pressed for an

explanation of that initial trade attempted to weaken the evidence of his letter by a suggestion that petitioner might have been hedging, and might have been accumulating the cotton. Outside of that suggestion, there is not a line of evidence to support the same. Mr. Thorn (419) attempted to escape the knowledge which that initial transaction brought to him. His evidence on that subject is not entirely frank. He must be held to know the contents of his own books. If that sales had been closing a previous purchase, his account on page 6 of the record would show a credit or a debit on petitioner's account. The undisputed evidence throughout is that there is not entered on the cash book any book entry when the first half of the transaction is had. A transaction consists of a sale and a purchase. If the first half is a purchase, no entry is made on the cash book. The entry is made on the cash book only after the second half of the transaction takes place. After that, the cash book will show a profit or a loss. To anyone, such entries on the books indicate that the party dealing in the futures is doing so for the purpose of speculating on the rise and fall in the prices. As is shown by the record (page 538), the petitioner was short on this Two Hundred (200) bales until November 10. On that day, he covered that Two Hundred (200) bales by the purchase of an equal number at the price of Nineteen and Thirty-eight Hundredths (19.38 cents). By the rise in prices, being a "bear" on the market, in that deal, he, therefore, lost, as is shown by the statement on page 6, Three Thousand and Ten Dol-

lars ($3,010.00). As will be shown later on, on that day, the petitioner closed all his transactions (581). The next transaction shown in the testimony occurred on October 5. On that day, the petitioner (536) bought Four Hundred (400) bales January at Sixteen and Seventy Hundredths Cents (16.70 cents). These were sold on October 11 at Sixteen and Ninety Hundredths Cents (16.90 cents). On October 20 (533), petitioner bought Five Hundred (500) bales at Seventeen and Seventy-six Hundredths Cents (17.76 cents), and sold the same five days later at Nineteen Cents ($0.19), making a profit of Three Thousand and Twenty-five Dollars ($3,025.00). On October 30 (337), he bought Two Hundred (200) bales January at Eighteen and Twenty-eight Hundredths Cents (18.28 cents) and sold these on November 10 at Nineteen Cents ($0.19). On November 4 (537), he bought Two Hundred (200) bales January at Eighteen and Forty Hundredths Cents (18.40 cents) per pound, and sold these on November 10 at Nineteen Cents ($0.19). On November 8 (537), he bought Two Hundred (200) bales at Nineteen and Seven Hundredths Cents (19.07 cents) and sold these on November 10 at Nineteen Cents ($0.19), losing on the latter transaction, but upon the entire transaction making a profit of One Thousand One Hundred and Sixty Dollars ($1,160.00) (537). In the above transactions, as well as all others hereinafter referred to, it will appear that respondents, on nearly every morning prior to the opening of the market, or soon thereafter, telegraphed to petitioner any important news which would affect the rise or fall of

prices on the market. The next transaction seems to have been on November 11 (444). On that day, petitioner telegraphed respondents as follows: "Stop Four Hundred January at Ninety." Petitioner was long on January at that time, and the telegram meant to sell Four Hundred (400) January at the price named. Respondents acted immediately, and wired petitioner that they had sold Four Hundred (400) January at Ninety on stop. This shows that there was no intention to deliver. This transaction is also shown on pages 532 and 536. The Four Hundred (400) January were bought on October 5. They were sold, as stated, on October 11, making a profit on the rise in price of Three Hundred and Forty Dollars ($340.00). See page 6. With a number of transactions on both sides of the market on October 13, petitioner telegraphed respondents to buy Five Hundred (500) January on the opening. In response, respondents wired that they had bought the Five Hundred (500), giving the price, and stated that offerings were light (579). This cotton that was bought on October 13 was sold on October 18 (535), making a profit of Four Hundred and Four (404) points and a net profit of One Thousand, Nine Hundred and Forty-five Dollars ($1,945.00). The next important transaction (446) was on October 19. On that day, petitioner wired respondents to stop Five Hundred (500) January at Eighteen Cents ($0.18). This shows that he was long on January futures and wished to reduce his holdings. Respondents at once wired back that they had sold the Five Hundred (500) bales at Eighteen Cents

($0.18). The language of their telegram establishes, it seems to the writer, the absence of any intention to deliver. They advise petitioner that contracts, meaning futures, are passing into weaker hands. They advise that country merchants and speculators are loaded up. It, therefore, follows that the market will be erratic and subject to violent changes. The next transaction of importance is on October 20 (459 and 460). On that day, petitioner wired respondents to buy Five Hundred (500) bales December, New Orleans and Five Hundred (500) January, New Orleans. They bought Four Hundred (400) January and Five Hundred (500) December, giving the price. On the same day, they wrote a letter, showing that they had entered an order to sell Two Hundred (200) January at Seventeen and Seventy-five Hundredths Cents (17.75 cents) "stop." This shows that they knew that petitioner was selling Two Hundred (200) January, and giving a stop order on it purely for the purpose of speculating in the rise and fall of the price. In the deal closed on that day, the petitioner made Two Thousand One Hundred and Thirty Dollars ($2,130.00). See pages 534, 580 and 6. On October 23 (449), the petitioner telegraphed to sell Five Hundred (500) bales at Eighteen and Thirty Hundredths Cents (18.30 cents) *"stop."* Whether that means to sell Five Hundred (500) bales on the market, and buy back at Eighteen and Thirty Hundredths Cents (18.30 cents) is a question. The witness Thorn, in construing a similar order, at one time admitted that an order like that meant to buy or sell the cotton at the market and

stop the loss at the figure named in the telegram. Four days later (450), the petitioner telegraphed to make the stop Eighteen and Seventy-five Hundredths Cents (18.75 cents). Later he changed that order. On the same day (532 and 580), the respondents complied with his order, selling the Five Hundred (500) January, and telling him that they still held an open order to sell "Five Hundred December at Eighteen and Seventy-five Hundredths (18.75 cents) stop." On the same day, petitioner wired respondents to buy Five Hundred (500) December and Five Hundred (500) January. The confirmation of these telegrams was sent with an important letter which appears on page 461. Respondents explained a sharp advance. They say that "was due to *rebuying* by former bulls." If that does not show dealing in futures to make money on the rise and fall of the price, the English language cannot be understood. Respondents also advise that the advance was due in part to a small crop estimate issued by a Chicago house and reported deterioration in the India crop by excessive rains. The same letter also shows buying of futures on expectations of a smaller ginning report. This likewise indicates speculating on the rise and fall in prices with no intention to deliver. In the same letter, there appears this: "There was further *realizing* by Wall Street and other longs and the market presented a decidedly two sided appearance ruling erratic with sharp fluctuations throughout the day." On that day, there were eight or ten telegrams passing between petitioner and respondents, changing stop orders from or-

ders to buy and orders to sell. These telegrams are absolutely and wholly inconsistent with any intention to deliver. See pages 450, 460, 532, 459 and 461. The next day (452), also shows additional confirmation of the absence of any intention to deliver. On that day, petitioner ordered sold Five Hundred (500) bales December at Nineteen Cents ($0.19) on "stop." Probably more than half of petitioner's orders were on stop. A stop order conclusively shows that its purpose is to make money on the rise or fall of the price. In a letter on October 25 (457), respondents advise petitioner that the technical position of futures is unsound. They state they assume further recession is in order but for ultimate results opinion favors much higher levels. Such a telegram incites a country merchant, farmer and cattle dealer like petitioner to speculate on the market. Such telegrams indicate the absence of an intention to deliver by anybody. In this connection, the confirmation letters reporting sales or purchases should be observed. See samples of them on pages 530 and 531. They refer to marginal business in futures and explain that stop orders are considered open unless otherwise specified. On January 25, petitioner gave one order to sell Two Hundred (200) January and one order to buy Two Hundred (200) January, and to sell Four Hundred (400) July (462). On the same day, respondents advise the purchase of Two Hundred (200) January and the sale of Four Hundred (400) July. See pages 462, 537, and 580. October 31 presents another busy day between the parties. Respondents buy Four Hundred (400) July on

stop. They advise that spots are steady and that bulls are supporting the market (454). They also speak of early liquidation, showing speculation by the sale of futures by "bears" and then an advancing tendency of the market after the early liquidation was over. They say that liquidation had about run its course. That was a suggestion to petitioner to buy. When liquidation has run its course, the cotton speculators buy because a rise is then due. They also advise that during the decline of October 30, a short interest had developed. The meaning of that is clear. The market was oversold. The overselling of the market would then lead to a rise. They give this information to petitioner so that he might speculate and make a profit on the rise or fall in prices. They also suggest that bullish sentiment took hold of the future market, but suggest that the best policy would be to make purchases on periods of weakness. For what purpose? Everybody knows. There can be no misunderstanding about the meaning of that suggestion. The purpose of it was to incite petitioner to buy futures during periods of weakness in prices. On October 31, the stop orders of the petitioner are numerous. See pages 454, 457, 455, 535 and 536. On October 31, the respondents buy Four Hundred (400) bales July, which bales had been sold by the petitioner on the day before. It is impossible to reach a conclusion from that other than that there was no intention to deliver. On October 31 (455), respondents advise petitioner that he is long Two Hundred (200) bales May and Two Hundred (200) bales January, and that he is short Two Hundred

(200) bales May. The latter was his initial transaction. On the same day, they report the purchase of Four Hundred (400) bales July. The next important transaction was executed on November 4, (463). A letter of that date indicates that they know that petitioner is speculating on the rise and fall in prices. They speak of open instructions to sell or buy on stops. They speak of trading, meaning in futures, being of a smaller volume "and largely confined to the professional element." It is, therefore, clear that they knew that petitioner was not intending to deliver. They also speak of the professional element having a tendency to "even up commitments over the forth-coming Presidential election." This shows that they knew that the longs will sell and the shorts will buy. The purpose in doing either is to make money on the rise and fall in prices. The petitioner was doing the same thing. The information was given him in order to enable him to act with profit to himself and to the respondents. In the same letter (463), they speak of the tone of the market, saying that the market displayed less nervousness yet fluctuations were at the time severe but "sentiment as a whole continues bullish for ultimate results, but in the meantime the disposition seems to be to ACCEPT PROFITS on periods of strength." No plainer language could be used by respondents. By that language, they show that they positively knew that petitioner and others were dealing in futures and gambling on the rise and fall in prices. In the same letter, they distinguish between dealing in futures and the spots, the latter carrying an in-

tention to deliver. The next important transaction was on November 6 (464). On that day, they advise petitioner that the market was quiet but the undertone steady. They confirm a telegraphic order to sell Four Hundred (400) January *on stop*, and they sold the Four Hundred (400) January on stop. They speak of the market turning easier under *liquidation "induced by the desire to even up over the election."* That means take profits. They say that sentiment is still for ultimate results, bullish. They refer to a strong spot situation with spot sellers indifferent. They also state that the market has been pretty well *liquidated* recently. They thus show that parties are speculating on the rise and fall. They also advise that the market may respond promptly to any bullish development. That again was another suggestion to the petitioner to buy cotton in order to make money on the rise. The next transaction was November 8 (465). They confirm the exchange of telegrams and make statements similar to the above. They show that they recognize stop orders, thus indicating that they knew that petitioner was dealing in futures with the expectation of making money on the rise and fall of prices. On the same day (466 and 467), they refer to the cancellation of orders and the entering of other stop orders. November 10 (537) was a very important day in these cotton future dealings. They *bought* Two Hundred (200) January (583) and *sold* Six Hundred January (537). They *covered* Two Hundred (200) bales January; (bought October 30) and Two Hundred (200) bales January bought No-

vember 4 and Two Hundred (200) bales January bought November 8. Out of these rises and falls in prices, the petitioner made One Thousand One Hundred and Sixty Dollars ($1,160.00). See 6, 464, 466 and 537. They sold Two Hundred (200) bales May cotton in New York (581), and petitioner made a profit of One Thousand One Hundred and Seventy Dollars ($1,-170.00). This cotton, as before shown, was bought at other times. On the same day, they also bought Two Hundred (200) bales cotton for May delivery, which was to cover the initial trade of September 22. See pages 538 and 419. They also bought One Hundred (100) January, Three Hundred (300) January, and sold Four Hundred (400) January. See pages 581 and 538. They also bought Two Hundred (200) bales March (582). That cotton was sold November 17 after a rise in price. On the same day, they advised petitioner that his account was Four Hundred (400) bales January long, and that they were entering a stop order in his behalf. On the same day, they give him a ledger credit, and advise him *that all his contracts are closed* (581). On November 11, appears another busy day. Petitioner gives an order to buy Two Hundred (200) March. They sell Six Hundred (600) January on stop, buy One Hundred (100) January, sell Four Hundred (400) January, buy Two Hundred (200) May, sell Two Hundred (200) May, buy Two Hundred (200) March and buy Two Hundred (200) January. See 470, 467, 552 and 582. On November 13, they advise him that he must deposit margins amount-

ing to Seven Dollars ($7.00) a bale, and that he is long Four Hundred (400) bales. On that day, they write him a very significant letter, stating that he has open contracts and only about Ninety (90) points to his credit at the close of the market that night, and demanding that he advance additional margins. They advise that reactions in the market will be temporary and suggest conservatism. On November 15, which is the next important day in the transactions, they advise him that liquidation is increasing (469) and ask him to deposit more money, and advise him that a big spot interest is buying March futures. Petitioner gives orders to sell Four Hundred (400) January and Two Hundred (200) March. Respondents bought Two Hundred (200) January and advise (583) that the market is very nervous, very speculative, *but looks higher*. That is again a suggestion that petitioner should buy. On November 16 (470), they confirm wires and again state that the *trade* was *buying*, but market nervous and very speculative. Petitioner cancels certain orders on stop and gives other orders to sell on stop. Respondents confirm the telegrams. On November 17, they advise petitioner of the sale of Two Hundred (200) March on stop, which had been previously bought. They also advise the sale of Four Hundred (400) January on stop. On November 18, petitioner gives an order to buy Four Hundred (400) January. Respondents bought Four Hundred (400) January (552). On that day, respondents again advise that New York wires that the South shows no weak-

ness and advises purchases. That again was an early telegram, being received at 9:33 A. M. Like nearly all the telegrams of respondents to petitioner, this was sent early so as to advise petitioner whether he should buy or sell on the market on that day. This not only evidences no intention to receive, but to the contrary. On November 20 (474) petitioner changes two stop orders. The changes are confirmed, and respondents write an important letter (475). In that letter the respondents say, "Needless to say, sentiment is very bullish, and *on periods of weakness, the market receives good support from spot interests.*" November 21 (476), numerous orders are given and on the same day numerous spot orders are executed. The same is true with November 22 (476). On that day (585), respondents advise that the fluctuations are two sided, and stated that heavy general liquidation that day was based upon the belief that present prices were high enough considering spots. They also say to petitioner in that telegram that spot interests in New York are large sellers; that leading bull interests tried to stem the tide, but support not sufficient to absorb the selling. They advise caution following the advance. On the same day, they sent another long telegram (585), advising that New York bulls were heavy sellers, and that outside longs absorbed offerings, tone nervous, sentiment reactionary, condition improved by liquidation. Without weakness among interior holders, the decline would only be temporary. If spots weaken, then there will be a further decline. That telegram can have but one mean-

ing. November 24 also recorded another important day. An order to sell Three Hundred (300) New York was given. They sold Three Hundred (300) March, New York, and mentioned the fact of notices out in New York and New Orleans having been stopped. This refers to the notices of delivery. On November 24, another long telegram similar to the others is sent by respondents (586). On November 25, they buy Three Hundred (300) March, which was *to cover a sale made the day before*. On November 27, petitioner gives an order to buy Four Hundred (400) January on stop, Two Hundred (200) January at opening, and on stop, AND TO SELL AT TWENTY-ONE (21) POINTS UNDER THE PURCHASE. Other orders were given, and most of them directed *a sale at ten* (10) *points under purchase*. This absolutely negatives the idea of any delivery. These orders were executed by respondents, showing their complete knowledge of the absence of any intention to deliver. They sold Two Hundred (200) January on stop, another Two Hundred (200) January on stop, bought Two Hundred (200) January on stop, bought Four Hundred (400) January on stop. The latter were sold on the next day, November 28, (542). See pages 479, 454, 485 and 488. On November 28, there were similar numerous transactions of the same kind, stop loss orders given to buy and to sell. On November 29, they advise petitioner that shorts were covering pending the holiday taking their profits of course on the rise and fall. December 1 was a full day of transactions

between the parties. They closed a stop loss order for Four Hundred (400) January on that day (586). They changed certain other stop orders (480 and 453). They bought Four Hundred (400) January on a stop order *at ten* (10) *under the purchase*. The petitioner gave two orders to sell Four Hundred (400) January *and stop ten* (10) *under the purchase*. Later on in the day (482), he gave another order of the same kind. Respondents bought Four Hundred January, placing the stop as requested. They sold the Four Hundred (400) on the stop. A large number of other orders of the same kind were given and executed under the same conditions on the same day. See pages 480, 542, 481, 482, 484, 543, and 600. December 2 was a similar day to December 1. See pages 482, 483, 589, 588, and 539. See telegram on page 588. December 4 was also a similar day. See pages 481, 485, 539, 589. Stop orders were executed; many orders given and executed which contained an order to buy or sell at the market and to sell or buy at a loss of ten points or fifteen to twenty points. December 5 was a much more important day. On that day, the same kind of orders were more numerous and the transactions were enormous considering the parties. See pages 485, 486, 491, 591, 592. The same is true on December 6. See the same pages, including page 593. On the latter page, and under date of December 7, the respondents refer to a "scalping market." That shows the absence of any intention to deliver. See an important telegram on page 491, showing the absence of an intention to deliver.

See also an equally important telegram showing the same intention on page 594. That telegram too was sent early in the morning. December 8 is another day very similar to the others. The transactions on this day are shown on pages 492, 493, 593, 594 and 547. December 9 is a similar day. See pages 593 and 548. The same is true of December 11. See pages 494, 495, 548, 556, 596 and 597. Another important day is December 13 of the same kind. See pages 496, 598, 555 and 556. A telegram on the latter page shows heavy continental and American *selling* in the Liverpool market. December 14 (498) and December 16 (498) are unimportant days. December 18 again shows a renewal of activity (499). December 19 also shows telegrams and dealings showing the absence of an intention to deliver (503 and 555). The same is true of December 20 (505). See page 601. Under date of December 18, another early morning telegram to influence petitioner is found. December 20 shows an increase in the transactions in stop loss orders and other dealings (601). December 21 shows an additional increase of purchases and sales and stop loss orders. See pages 546 and 603. As to December 22, see page 503, where similar transactions take place. On page 503, respondents refer to the market as looking healthier than theretofore. See also page 604. December 23 is another record similar to the preceding. See pages 506, 507 and 604. December 26 shows a large increase in the activities under early telegram inciting deals on page 606. See pages 605 and 606. December 27 is a similar day. See page

607. December 28 is another active full day, showing a large number of transactions between the parties. See pages 607, 608, 609 and 611. December 29 is a similar day. See pages 507, 548, 611, 612 and 613. December 30 is a similar day. See pages 509 and 613. January 3 is a more important day. See pages 511, 549 and 613. For similar days, see January 4, pages 511 and 614, January 5, pages 513 and 615, January 6, pages 514, 551 and 616, January 7, pages 514 and 515, January 8, pages 515 and 616, January 9, pages 515, 549, 616 and 618, January 10, pages 517, 545, 550 and 618. A more important day is January 11. See pages 518, 544 and 618 and 620. This was a day of stop loss orders, short sales, rapid rises and falls and rapid dealing. The same is true of January 12. See pages 519, 521, 540 and 621. See also January 13, pages 520, 546, 615 and 623. January 15 and 16 and 17 are unimportant days. On the latter day (623), respondents advise that the undertone is not good and market looks lower, AND ALSO ADVISE SALE ON RALLIES FOR THE PRESENT. Will not a court know what that means? These telegrams were sent at 9:10 and 9:25 in the morning. They do seem conclusive of an intent not to deliver. January 18, 19 and 20, pages 522, 624 and 625, are unimportant except an important message on page 625. January 20 shows another general activity. See pages 540, 624, 625, 626. The same is true of January 23 (page 522) and January 24 (page 539). January 25 becomes another *thrilling day*. See pages 55, 407 to 409, 525 and 629. The same is true of January 26.

See pages 527, 629 and 630. January 27 is a similar day. See pages 526, 630, 383, 58 and 410. January 29 is a more active day. The ups and downs and stop orders are more numerous on that day. See pages 60, 528, 539 and 631. On January 30, there are some important deals. See an important message on page 632. The same is true of January 31. See pages 63, 384, 390, 415 and 530. February 1 is the final day. See pages 64, 386, 384, 394 and 543.

VIII.

**Respondents introduced no substantial evidence to show that they were without knowledge of petitioner's intention not to receive or deliver cotton.**

That question becomes a crucial point in determining the question under consideration. The court instructed the jury that if there was no intention to deliver or if the respondents had knowledge that petitioner had no intention to deliver, then there could be no recovery. It, therefore, follows as a matter of law that if respondents intended delivery as between themselves and the other brokers, yet if they knew that petitioner had no intention to receive or deliver the actual cotton, then they must fail, and the court should have directed a verdict in that event in favor of the petitioner.

It is submitted that there is no substantial evidence in the case controverting the knowledge positively and definitely shown on the part of respondents by the telegrams and letters referred to to the effect that they were aware of the absence of any intention on the part of the

petitioner to deliver the cotton. In other words, all the evidence taken together as a whole demonstrates that respondents knew beyond question that petitioner did not intend to deliver. If I am right on that question, the cause must be reversed regardless of what other questions may be in the case. In other words, if there is no substantial evidence controverting the evidence of the telegrams and letters, which latter established knowledge of respondents that petitioner did not intend to deliver, then there was nothing to be submitted to the jury on the question. Respondents rely upon the evidence of Charles B. Thorn to show that they intended to deliver. It is submitted that that evidence does not show the absence of knowledge by respondents that petitioner did not intend to deliver. The evidence of Thorn on the point appears on pages 416 and 417. On page 416, he says in substance that it was not his custom generally as a member of the New Orleans Cotton Exchange to believe that a customer had no intention of either accepting or delivering the cotton bought or sold. To say that it was not his custom to believe does not controvert the existence of knowledge of the intention of the petitioner. The telegrams and letters above referred to show conclusively such knowledge. Many of those letters were written by Thorn himself. Thorn is not asked the question as to whether he had knowledge of the intention of petitioner not to deliver. A custom as to his belief is not sufficient to authorize the jury to find that he did not have *knowledge*. Respondents, however, rely upon the further evidence of this witness on page 417. He is there asked

his own intention at the time that he entered into the various contracts with the brokers "with reference to the circumstances of the cotton on behalf of Browne." The question does not call for any statement as to Thorn's knowledge of Browne's intention. It calls for a statement of Thorn's intention as between him and the brokers. As between them, he says it was his intention to make delivery. He further says that it was his intention to "spot" the cotton that he had contracted to buy. The meaning of that is not clear. If it means that he intended to secure the cotton, then it would follow, if that be true, that when he thought twelve thousand, one hundred (12,100) bales on February 1, he intended to receive and pay for that amount of cotton. Twelve thousand, one hundred (12,100) bales of cotton at eighty-five dollars ($85.00) a bale amounts to one million, eighteen thousand, five hundred dollars ($1,018,500.00). It requires more than human credulity to believe that statement. By this suggestion, it is not intended, however, to argue to this court the credulity of the witness. It is intended to say that all of Thorn's evidence must be considered together. On Page 558, he testifies that there are four hundred and seventy (470) or four hundred and eighty (480) members of the New Orleans Cotton Exchange. If the other members on February 1 handled the amount of cotton handled by Thorn & Maginnis on that day, it would follow that the number of bales bought on that day amounted to three million and twenty-five thousand (3,025,000), approximately one-third (1-3) of the crop of that year. How many were bought

on the New York Cotton Exchange on the same day is not shown. The very enormity of the bales of cotton dealt in under the soundest reasoning under ordinary circumstances and as between ordinary individuals, is sufficient to show that the petitioner could not have any intention to deliver. The telegrams and letters show the absence of an intention to deliver, and that respondents had knowledge of that fact.

Respondents say that they looked up petitioner in a cotton book. It is, therefore, assumed that they obtained correct knowledge of his business and resources. He was a farmer and a stock raiser, owning about one thousand (1,000) acres in farms. According to his own statement, which is not controverted, deducting his debts from his assets, he was worth approximately twenty-five thousand dollars ($25,000.00) or thirty thousand dollars ($30,000.00). He had no means with which to buy thirteen million, eight hundred and fifty thousand (13,850,000) pounds of cotton, amounting to twenty-seven thousand, seven hundred (27,700) bales. The evidence on that subject is not controverted. As elsewhere stated, at eighty-five dollars ($85.00) per bale, the value of that cotton was two million, three hundred fifty-four thousand, five hundred dollars ($2,354,500.00). Respondents say, however, that if he had carried the contracts to maturity, he could have received the cotton on the purchases. That begs the question. The undisputed telegrams and letters from respondents to petitioner show beyond question the absence of any intention to carry the contracts to maturity. Hence, there was no intention

to receive or deliver. It does not satisfy the law or the public policy of governments, for the mind to say as to petitioner that there is honor in gambling and that as he gambled he must pay his losses. The intention to deliver cannot be established by the very high commendable moral feeling that one who gambles should pay his losses. The public policy of governments is in restraint of gambling. The Cotton Futures Act was passed for the purpose of striking down all contracts in futures except those specifically authorized. Its purpose was to discourage gambling in one of the necessities of the nation.

In addition to the above, it is undisputed in this record that there is not a word in any letter or telegram covering the period of four months which relates to the matter of *delivering* and *paying for* the cotton dealt in. The petitioner, during the months of October and November, dealt extensively in January cotton. *The telegrams and letters make no reference to any financial matters* except that of putting up margins. At no place in the correspondence is there any reference to a preparation for delivery. Are we to take the absurd view that respondents believed that petitioner was worth two and a half (2½) million dollars and could pay for and receive the twenty-seven thousand, seven hundred (27,700) bales of cotton covering that period? If any intention to deliver existed, why was it that the respondents said nothing about the matter of delivery? In a note to the case of *Richter* v. *Poe*, (109 Maryland 120) 22 L. R. A. (N. S.) 174, the author says: "It is equally true, however, that such fact may be taken into consideration in deter-

mining its real character, so that where *margins alone seem to be within the contemplation of the parties*—as where a purchaser's financial ability is not commensurate with the amount of his purchases, or where the dealings of the parties are *purely in relation to the margins and not* to the completion of the sale or purchase—*it may be regarded as a gambling transaction.*" That statement of the law in that note applies to the facts in this case. The only concern in the minds of the respondents during the entire period covered by the dealings in futures related to the matter of margins. They never for once consider the ability of the petitioner to take and pay for the cotton. Hence, there is established the absence of any intention to deliver or receive cotton. The telegrams and letters establish beyond controversy two thoughts in the minds of the respondents. One of these related to the margins, and the other related to the matter of giving petitioner information as to the trend of the market to the end that he might speculate so as to make money. A continual call for margins and the absence of any suggestion as to delivery, although the delivery months had passed, is conclusive of the absence of an intention to deliver.

*Sprague* v. *Warren*, 26 Neb. 326 sc, 3 L. R. A. 679.
*Lyon* v. *Culbertson*, 83 Ill., 33.
*Waite* v. *Frank*, 14 S. D. 626.

A call for margins only and no reference to or call for purchase money shows the absence of an intention to deliver.

*Jamieson* v. *Wallace*, 167 Ill. 388.

In *Weare Commission Company* v. *People*, 209 Ill. 528, the court said: "Participation by a commission firm in the illegal intent of a customer is shown by evidence that the firm maintained an office in charge of an agent who received orders for future delivery of grain on deposit of a margin and transmitted the order to the firm which filled it in its own name and sold on a rise before the time for delivery, crediting the profit to the customer."

The innumerable purchases and sales and stop loss orders of petitioner to respondents certainly notified respondents that petitioner had no intention to deliver any of the cotton. The initial trade was made in September. It was a deal in May cotton of the succeeding year. In October, November and December, innumerable trades were made in the nearer month of January, 1917. Some deals were made in October. In not a single instance at the time is there found a single word from respondents relating to the delivery and the payment of the purchase price. Everything related to margins and the rise and fall in prices. They speak of erratic markets, of lower prices, of higher prices, and of the reasons which will bring about a rise or fall in the prices. They advise petitioner to buy or sell in cotton after giving their view of the tendency of the market. They speak of "*floor traders*" influencing the market, and bulls buying and bears selling, and the reverse. See also *Sharp* v. *Stalker*, 63 N. J. Eq. 596. In addition, the magnitude of the purchases and sales and the limited amount of money used established the absence of an intention to deliver.

Patterson's Appeal, 13 W. N. C. 154.

IX.

**The court erred in holding in the charge to the jury that the intention not to deliver must exist in both petitioner and the respondents.**

The Court of Appeals held that if the intention to deliver existed on the part of only one of the parties, then the transaction was not a gambling venture. That may be the rule in some jurisdictions, but under the Cotton Futures Act of Congress there is nothing to show that such is the meaning of the law under that Act. This question was raised by petitioner's request No. 10, which is as follows:

> "If either party to the contract, that is, if the defendant or the plaintiffs, or if the defendant's vendee or vendor, did not intend under these contracts to deliver any cotton or of receive any cotton, and if it was intended only to settle as above stated upon the rise and fall in price of cotton, then the contracts were wagering contracts, and there can be no recovery in that event."

It is respectfully submitted that an intention not to deliver on the part of petitioner alone is sufficient to defeat respondents' recovery. That is true necessarily for the additional reason that there is no evidence to show a lack of knowledge of that intention on the part of respondents. The suit was tried in the State of Arkansas. Under the statutes of that state, an intention not to deliver on the part of either party to the transaction makes the contract a gambling venture.

Crawford and Moses' Digest, Sections 2652 to 2666.

In that connection, it should not be overlooked that the respondents received their money in the transaction in the State of Arkansas. Every dollar of the eighteen thousand, two hundred dollars ($18,200.00) put up by petitioner was put up to the credit of respondents in the bank of Fort Smith, with the exception of the initial one thousand dollars ($1,000.00), and the latter was deposited to the credit of respondents in the bank of Crowder, Oklahoma. The transactions, therefore, in part occurred in the State of Arkansas, and in violation of the criminal laws of that state. Section 2652 of Crawford and Moses' Digest declares dealing in futures on margins to be gambling and any person engaged in such dealing in futures is guilty of a misdemeanor. Section 2653 of Crawford and Moses' Digest defines the meaning of dealing in futures. If either party to the transaction has no intention to deliver or receive the commodity, it is a gambling transaction. It is, therefore, submitted that the rule declared by the District Court and approved by the Circuit Court of Appeals holding that there must be an intention not to deliver on the part of petitioner and the party selling to him is inapplicable in this case. In addition, it was error to give that instruction because it was misleading to the jury. In giving that instruction, the court placed respondents in the attitude of a principal selling to petitioner or buying from him. That confused the issue. The real question was whether respondents had knowledge of petitioner's intention not to deliver. It was error, therefore, to give that instruction.

X.

**Was the transaction an Arkansas trade?**

The court made no direct ruling on that point. The undisputed evidence is that petitioner lived in Arkansas, and respondents in New Orleans. The deals were made on the New Orleans Exchange through respondents as brokers. The money advanced by petitioner was deposited to the credit of respondents in the bank in Fort Smith, Arkansas. The contract was, therefore, in part carried out in Fort Smith, Arkansas. That raises the question as to whether the contract is illegal under the laws of Arkansas above cited. The deposit of the money in the State of Arkansas was depositing money in violation of the laws of that State. Respondents and petitioner must be held to know the law. In placing the money in the State of Arkansas in violation of the laws of that State, the respondents are not in a position to recover.

XI.

**The United States courts will not enforce in the State of Arkansas a contract which is illegal under the laws of that state even though said contract be valid in the State of Louisiana.**

This contract, it is suggested, is not exclusively a Louisiana contract. The deposit of the money was made in Fort Smith, Arkansas. The evidence of the petitioner (  ), which evidence is not contradicted, shows that respondents would do nothing, would make no deal, would neither buy or sell futures for petitioner until

after the money was deposited to the credit of respondents in the bank in Arkansas.

It is, therefore, submitted that the courts in Arkansas, including the Federal Courts, should not enforce contracts which are in violation of the laws of the State of Arkansas.

*Logan & Bryan* v. *Postal Telegraph Co.*, 157 Fed. 570.

*Burrus* v. *Witcover*, 158 N. C. 384 sc, 39 L. R. A. (N. S.) 1005.

XII.

**The court erred in holding that hedging was not dealing in futures.**

On that subject, the District Court said:

> "Reference was made in the testimony to what is termed hedging. Hedging is a means by which collectors, owners and exporters of cotton, or other products and manufacturers who make contracts in advance for the sale of their goods, secure themselves against the fluctuations of the market by counter-contracts for the purchase or sale, as the case may be, of an equal quantity of the product or of any material of manufacture. Such contracts are legal and if you find from the testimony that the contracts in this case were hedging contracts, then they were legal and enforceable, or if you find that the plaintiffs believed that they were hedging contracts, they were legal and enforceable."

I find nothing in the United States Cotton Futures Act, which authorizes a hedging contract as defined in the testimony. The hedging contract is not justified, either under the Act of Congress or otherwise. If a

hedging contract is made, not in accordance with the Cotton Futures Act, said contract is necessarily a violation of the law. The Act, itself, makes it a misdemeanor to deal in futures in violation of the contract. Anyone who aids or abets in making these illegal contracts is guilty of a misdemeanor.

> See U. S. Legal Code, Sect. 322; 35 U. S. Stat. 1152, 6 Fed. Stat. Ann. p. 984, and cases there cited.

*But there was no evidence to warrant that instruction* —no evidence whatever to show any "hedging." Thorn said petitioner *might* be hedging on the initial "sale" but he did not know; and Browne flatly said he was not hedging in any of the deals. Hence that charge was misleading and manifestly erroneous.

It is claimed that a hedging contract is made for the purpose of securing profits already made, or to prevent losses on grain or cotton, that may be held. That does not prevent it being a gambling contract. For illustration, if a man owns 100 bales of cotton, and if the price is at 20c, and if he is not prepared to deliver that cotton at any specific date, then it is contended that he may sell futures for the purpose of preventing a loss on the spots which he holds. It will be remembered that there is no connection between the actual commodity which he holds, and a future contract. Therefore, under the circumstances, when a man sells futures simply to save himself from a loss on the spots, he is violating the law, because he is trading in futures without any intention to deliver, but merely to save his profit on the rise or fall

in price. I cannot possibly see any defense to a hedging contract. It is an admission that he does not intend to deliver the cotton. If a man owns 100 bales, and then sells 100 bales on the New Orleans Cotton Exchange, he admits that he does not intend to deliver the cotton on the New Orleans Cotton Exchange. A man may own 100 bales in Arkansas and desire to sell it in Liverpool. The price at the time is satisfactory. He therefore sells on the New Orleans Cotton Exchange, so that he may make his profit without delivering the cotton on the New Orleans Cotton Exchange. He delivers it in Liverpool or New York, or somewhere else. After he sells his spots, then he buys on the New Orleans Cotton Exchange simply for the purpose of closing out his future deal. The purpose of the future deal was to speculate on the rise and fall in prices. It is a speculation, although it is made for hedging purposes. It can have no other construction. For that reason the court erred in giving the instruction referred to.

In addition to that, it was error to give this instruction because there is no evidence upon which to support it. Thorn was the only witness who testified on the subject. He had no knowledge that Browne was hedging. He said that Browne might be hedging. Hence, the instruction was without evidence to support it, and is not the law.

## XIII.

**Error of the court in refusing instructions based upon the Cotton Futures Act.**

The requests made by the defendant and refused by the court, to which exception was saved and referred to in said assignments, are as follows:

"Under the Act of Congress, known as the Cotton Futures Act, and under the Treasury Regulations made thereunder, the evidence in this cause is insufficient to show that the dealing in cotton for future delivery referred to in the evidence in this cause, and the contracts made for the purchase and sale of said cotton complied with the Cotton Futures Act."

"Under the Cotton Futures Act of Congress, no legal contract for the future delivery of cotton can be made except by putting said contract in writing. The contracts offered in testimony state on their face that they are made in compliance with the Cotton Futures Act of Congress and the regulations of the New Orleans Cotton Exchange. The rules of the New Orleans Cotton Exchange permit oral contracts. The Act of Congress does not permit oral contracts of that kind. Hence under the Act of Congress the contracts offered in evidence are invalid and cannot be the basis of a recovery in this action."

"It was the intention of Congress in passing the Cotton Futures Act of Congress to strike down and make illegal and void every contract for the future delivery of cotton, unless said contract was made in accordance with the terms of said Cotton Futures Act. Therefore, if the Internal Revenue of two cents per pound as provided by the Act of Congress was not paid by the parties to the contract offered in testimony, and if the parties did not enter into the contract as provided by said Act of Congress, then the entire transaction is illegal and void, and there can be no recovery in favor of the plaintiff. The Cotton Futures Act of Congress as

'That upon each contract of sale of any cotton to the tax provided as follows:

for future delivery made at, on or in any exchange, board of trade or similar institution or place of business, there is hereby levied a tax in the nature of an excise of two cents for each pound of cotton involved in any such contract.'"

"Section 4 of said Cotton Futures Act is as follows:

'(Contracts for Sale Form and Contents.) That each contract of sale of cotton for future delivery mentioned in section three of this Act shall be in writing plainly stating or evidenced by written memorandum showing the terms of such contract, including the quantity of the cotton involved and the names and addresses of the seller and buyer in such contract, and shall be signed by the party to be charged, or by his agent in his behalf. If the contract or memorandum specify in bales the quantity of the cotton involved, without giving the weight, each bale shall, for the purpose of this Act, be deemed to weigh five hundred pounds.'"

"Under Section 5 of said Cotton Futures Act, it is provided that no tax shall be levied under the Act, on any contract of sale mentioned in Section 3, quoted above, if the contracts comply with each of the conditions named in Section 5. One of these conditions is that said contract must conform to the requirements of Section 4 and the Rules and Regulations made pursuant to that Act. After the passage of said Act, certain regulations were made by the Treasury Department of the United States. Acting under the authority of said Act of Congress, the Treasury Department of the United States adopted the following regulation:

'No provision, by-law, rule or custom of any exchange, board of trade or similar institution or place of business which is inconsistent or in conflict

with any requirement or provision of the Act to provide revenue to defray war expenses and for other purposes, approved October 3, 1917, or any regulations thereunder, nor any collateral, or additional agreement or understanding, either verbal or written, respecting the subject matter of such contract or the settlement or fulfillment thereof, which is inconsistent or in conflict with any requirement of said Act or the regulations thereunder promulgated by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall exempt any person from the payment of the tax provided for under Section 807, Subdivision 5, of said Act.'

"The jury are therefore instructed that if there is any provision, by-law, rule or custom of the New Orleans Cotton Exchange which is inconsistent with or in conflict with any requirement or provision of the Act of the Cotton Futures Act, or if there is any additional agreement, understanding, either verbal, or written, respecting the subject matter of said contract or the settlement or fulfillment thereof, which is in conflict with any requirement of said Act, then and in that event the contracts offered in evidence would be illegal and void, and there can be no recovery. In that regard, if the provisions of the New Orleans Cotton Exchange regulations and rules provide for verbal contracts or if they provide for settlements so as to prohibit the actual delivery of the cotton to the defendant if actual delivery was intended then said regulations would be in conflict with the Act of Congress, and the rules of the Treasury Department and in that event said contracts would be invalid and no recovery could be had upon them."

It is respectfully submitted that it was error to refuse each of these instructions.

## XIV.

**Error in Refusing Instruction No. 7.**

That instruction is assignment of error 135, page 46, and is as follows:

> "If, under the rules and regulations of the New Orleans Cotton Exchange the plaintiffs or the buyer or seller of cotton to or from the defendant, had the right to prevent the defendant from actually receiving the cotton contracted for, or if under said regulations there was any impairment of the defendant's right to receive said cotton, then the contracts offered in testimony did not comply with the Cotton Futures Act and the Treasury Regulations thereunder, and if that be the fact, then the plaintiffs cannot recover."

Under the Cotton Futures Act and the treasury regulations made in pursuance thereof, and by reason of each of them this instruction should have been given. It is the intention of the Cotton Futures Act to prevent gambling ventures in cotton. Hence, the court should give the Act a liberal construction in that respect. Section 3 of the Cotton Futures Act requires the payment of a tax of 2c on each pound. If, under the rules of the New Orleans Cotton Exchange, the person who sold to Browne or the person who bought from Browne had the right to prevent the actual delivery of cotton under the said rules, then it seems reasonable to say that said contract would be in violation of Section 4 of the Cotton Futures Act. That section requires the contract to be in writing, plainly stating the terms of such contract, including the quantity of the cotton involved and the

names and addresses of the seller and buyer in such contract. It really seems that Congress clearly intended that every person interested in any contract should have his name on that contract. To say that the brokers may make written contracts, as agents for their principals, without any writing from the principals, authorizing the signature for the principal on behalf of the agent, seems to me to change the meaning of the Act of Congress. The contract must be signed by the principal or by his agent, *in his behalf*, which means in the name of the principal. Hence, the law seems to be that if it is not signed by the principal through himself personally, it must be signed by the principal by the agent. In other words, the principal's name must be on the contract, and it must show on the contract that the name was signed by the agent. If that is not the rule, then the brokers on the Cotton Exchange may buy, for one-half of the people of the United States on one side, and one-half on the other, without anything in writing to show that the contract was executed by the principal. I do not think the Act of Congress is subject to that construction.

Therefore this instruction No. 7 should have been given.

XV.

**Error in Refusing Defendant's Request No. 8.**

This request is found on page 47 in assignment of error 136, and is as follows:

> "If the defendant on the morning of February 1, 1917, sent to the plaintiffs a telegram, authoriz-

ing them to stop his losses on 1000 bales at 17.20 cents per pound and on 1000 bales at 17.15 cents per pound, and if there was a custom upon the New Orleans Cotton Exchange, authorizing the plaintiffs upon receipt of that telegram to sell defendant's cotton at 14 cents per pound, and if that custom was unknown to the defendant, then such telegram would not authorize the plaintiffs to sell out defendant's contracts for the future delivery of cotton, if they were valid and at the price of 14 cents per pound. If such are the facts, the sale made by the plaintiffs of 2000 bales of cotton at 14 cents was unauthorized by the defendant and in that event the plaintiff cannot recover."

It is respectfully submitted that the court should have given this instruction. There was no testimony to show that the defendant had any knowledge of any custom on the New Orleans Cotton Exchange, authorizing the sale of his cotton at 14c, when he had authorized it to be sold at 17c. Even if the contract is in every way valid, it was error to refuse this instruction. It was an issue of fact for the jury to determine whether or not the respondents acted properly under their authority as brokers. There is no evidence that the petitioner had any knowledge that cotton would open on the New Orleans Cotton Exchange as low as 14c. The respondent's evidence tends to show that they frequently gave information when the margins were getting too low. Under the facts in this case, when cotton opened at 14c, considering the transaction valid, petitioner's margin had already been entirely wiped out. He was entitled to notice before he should be closed out. Therefore, it was error to refuse this instruction.

The respondents attempted to show that under a custom of the New Orleans Cotton Exchange, a telegram like that, authorizing the sale of one thousand bales at the price of 17.20 cents and one thousand bales at 17.15 cents would authorize the sale of cotton at 14 cents if the market was at 14 cents when the telegram was received, the defendant not knowing that the market had thus fallen. It is respectfully submitted that such is not the law without proof that the petitioner understood that custom. I have searched the rules of the cotton exchange, which are in evidence, and do not find anything in those rules that would authorize such a construction to be placed upon that telegram. There is nothing in the complaint which explains that such is the meaning of the telegram. There is nothing shown in other telegrams or letters which tends to prove that the defendant had any such knowledge of any such a custom. The following authorities hold that before a custom of that nature can be proved, it must be shown that it was known to the opposite party.

*Irwin* v. *Williar*, 110 U. S. 499.

*Baxter* v. *Sherman*, 73 Minn. 434, s. c. 76 N. W. 211.

*Robbins* v. *Maher*, (N. D.) 103 N. W. 755.

*Ferguson* v. *Gooch*, 94 Va. 1, s. c., 26 S. E 397.

*McSherry* v. *Blanchfield*, 68 Kan. 310.

*Gilmer* v. *Young*, 122 N. C. 806.

*New Roads Oil Mill Co.* v. *Kline Wilson & Co.*, 154 Fed. 296.

*Weir* v. *Dwyer*, 114 N. Y. S. 528.

The latter case is exactly in point, as it was an action for advances by a broker.

*Johnson & Moran* v. *Buchanan*, (Tex.) 116 S. W. 875.

*Talbot* v. *Mattox etc. R. R. Co.*, (Okla.) 109 Pac. 128.

*Exchange National Bank* v. *Little*, (Ark.) 164 S. W. 731.

Many other cases could be cited along the same line. *It would seem to do great violence to fair dealing to hold that a telegram to sell* 2,000 *bales of cotton at* 17.15 *cents per pound could be held to authorize a sale at* 14c *without any notice that the price had fallen to that figure.* It does seem that right dealing would require that the defendant should be given notice under the circumstances. The telegram on its face authorized no such transaction. At most, the defendant authorized the sale of the so-called cotton at 17.15c per pound. He did not authorize it at any less figure. There is no showing that he knew or had any opportunity to know at the time that he sent the telegram, that cotton was as low as 14c. There is nothing to show that he could anticipate that cotton would be as low as 14c. It therefore seems reasonable to say that the telegram was inadmissible, and the custom was inadmissible, and any explanation of the telegram was inadmissible, without first stating that the defendant knew that if he authorized the sale of the cotton at 17.15c per pound it might be sold under a custom at 14c per pound.

The following cases are referred to for the purpose of showing the duties and obligations existing between broker and customer did not authorize such sale:

*Ling* v. *Malcolm*, (Conn.) 59 Atl. 698; s. c., 77 Conn. 517.
*Winston* v. *F. A. Longshore*, 116 La. 21; s. c., 40 So. 517.
*Katz* v. *Nast*, 187 Fed. 529.
*Hughes* v. *Barrell*, 167, Ill. App. 100.

The broker is a pledgee, and he cannot arbitrarily disregard the rights of his customers.

*Richardson* v. *Shaw*, 209 U. S. 365.
*Hurt* v. *Miller*, 190 N. Y. 553.

XVI.

**Error in Refusing Instruction Numbered 13.**

That request is found on page 49 in assignment of error No. 141, and is as follows:

> "If the plaintiffs were brokers upon the New Orleans Cotton Exchange, and if they purchased for the account of the defendant from other brokers on said Cotton Exchange 2,000 bales of cotton prior to February 1, 1917, and if on February 1, 1917, the plaintiffs, as brokers, sold to other brokers for the account of the defendant 2,000 bales of cotton, and if these trades were in the form required by the rules of the New Orleans Cotton Exchange and the United States Cotton Futures Act, and if the parties to these transactions, under the guise of such a contract, did not intend to deliver or receive cotton under said contracts, and if the real intent was merely to speculate in the rise and fall of prices and the cotton was not intended to be delivered, but one party was to pay to the other the difference

between the contract price and the market price of the cotton at the date fixed for executing the contract or at such other date as the parties interested might elect, then the whole contract constituted nothing more than a wager and is null and void, and in that event the plaintiffs cannot recover."

For the reasons heretofore given, it was error to refuse that instruction. It is respectfully submitted that it is not covered by the court's charge.

XVII.

**Error in Refusing Instruction No. 14.**

That instruction is on page 49, and is Assignment of Error 142, and is as follows:

"If the parties, the plaintiffs and the defendant, or the latter's vendors or vendees, at the time of entering into the transactions, did not intend to deliver any cotton on the contract, and if it was their intention not to deliver any cotton, but to take profits or losses by the rise or fall in the price of cotton, then said contracts are void, and if such are the facts, then even if the defendant agreed to pay the balance, such an agreement in that event would not be binding, and under those facts, the plaintiffs cannot recover on any agreement by defendant to pay, if he made such agreement."

This submits to the jury the question of the intention of the vendor in the cases where the defendant bought, and to the vendee in the cases where the defendant sold. It seems to me there is no escape from the contention that that issue should have been submitted to the jury, and that the refusal of that instruction is error. If it be true that the principal of the broker

opposed to the plaintiffs did not intend to deliver or receive, and if Browne did not intend to deliver or receive, then it was a gambling venture. That would be true, even though the brokers themselves, under the New Orleans Cotton Exchange rules, intended a delivery, if the contract ever matured.

XVIII.

**Error in Refusing Instruction No. 15.**

This instruction is the counterpart of that given by the court on the question of hedging. This instruction is found on page 50, and in Assignment No. 143. It tells the jury that if hedging contracts were made with an intention neither to deliver nor receive the cotton, they are invalid, and if the transactions in question were of that nature, there could be no recovery. It is respectfully submitted that that is the law.

XIX.

**The court erred in directing a verdict on the counterclaim in favor of the respondents.**

Due exception was saved to that part of the court's charge. Under Sections 2652, 2653 and following in Crawford and Moses' Digest of the Statutes of Arkansas, dealing in futures is made gambling. Under Section 4899 and following, of the same Digest of the Arkansas Statutes, a right is given to recover money lost at gaming. Under these statutes, if the transactions were gaming transactions, then the petitioner had the

right to recover back the money, amounting to Six Thousand seven Hundred and Sixty Dollars ($6,760.00) in the hands of the respondents.

XX.

The respondents introduced the bought and sold brokers sold slips covering the purchases and sales from January 25, 1917, to February and were permitted to testify that Browne had an interest in certain bales in those slips. Objection to that evidence on the ground that it changed the contract by oral testimony. See pages 68, 69, 75, 76, 77, 79, 80, 84, 85, 86, 88, and 816.

See authorities cited under paragraph IV above.

XXI.

If there was a custom such as that testified to by L. P. Barkdull (396), M. J. Kehoe (71), S. C. Coleman (115), before the evidence of that custom could be admitted in evidence it must be shown that petitioner had knowledge of that custom. This evidence relates to the telegram sent by Browne, the petitioner on February 1 reading "Stop ten seventeen twenty and ten seventeen fifteen" which was sent to respondents at 8:30 A. M. Feb. 1. The evidence objected to was that the custom authorized respondents upon receipt of that telegram to sell the futures at 14 cents. See pages above.

Before evidence of that custom can be introduced it must be first shown that the party against whom the evidence is offered had knowledge of such custom.

See authorities under paragraph II above, page 38.

## Conclusion.

The Counsel make due apology to the court for the great length of this brief. Its length is in truth unavoidable. The record is long, the facts are numerous, and the questions many and difficult. I have placed first the questions of the invalidity of the Cotton Futures Act, with the exception of Sections 3, 11, 14 and 22. If the court holds that the entire act is valid, then it will be necessary to consider the instructions of the court and the refusal of the court to give instructions based upon the Cotton Futures Act. If the court should hold that the Cotton Futures Act was valid in so far as it levied an excise tax, then it will not be necessary to consider any other question in the case. I have, therefore, placed that question first.

It is respectfully submitted that the cause should be reversed and dismissed.

JAMES B. MCDONOUGH,
*Counsel for Petitioner.*

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WM. R. STAN
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IN THE

# Supreme Court of the United States

No. 88—October Term, 1922

FRED BROWNE ..... Petitioner

vs.

CHARLES B. THORN, WILLIAM T. MaGINNIS, SAMUEL C. COLEMAN, and MILES J. KEHOE, Partners, Doing Business as Thorn & Maginnis ..... Respondents

## BRIEF OF RESPONDENTS

JOS. E. JOHNSON,
of Atlanta, Georgia;
L. C. GOING,
of Memphis, Tenn.;
BEN CRAVENS & IRA D. OGLESBY,
both of Fort Smith, Arkansas,
Counsel for Respondents.

## INDEX


| | Page |
|---|---|
| Statement of the Case | 5 |
| Petitioner is precluded now from raising any question as to the validity of any part of the Cotton Futures Act | 10 |
| If the Act is unconstitutional it is entirely so and the tax feature disappears with the rest | 12 |
| A stop order contemplates a telegram stop ten at 17.20 and ten at 17.15 means, according to the rules and customs of the New Orleans Cotton Exchange, to sell at the opening of the market at the above prices, if possible, or the next best possible price | 14 |
| Sellers slips and buyers slips showed a compliance with the United States Cotton Futures Act | 21 |
| The meaning of the words "The Party to be Charged" | 22 |
| Under the Treasury Regulations the contracts complied with Section 5 of the Act of Congress | 12 |
| The contracts are legal under the Cotton Futures Act as well as under the New Orleans Cotton Exchange | 12, 14, 26, 43 |
| The undisputed evidence shows that respondents intended delivery of the cotton and that petitioner was familiar with the rules and regulations of the Exchange | 16-24 |
| Respondents did not know of petitioner's intention not to receive or deliver cotton | 24 |

Page

The Court did not commit error in charging the jury that the intention not to deliver must exist in both petitioner and the respondents 18

It was a Louisiana contract and legal under the laws of that state 28

The United States Court will enforce a contract if legal where made, even though petitioner deposited money in Arkansas to the credit of respondents 28

The Court did not err in holding that hedging contracts were legal and enforceable 38

The Court did not commit error in refusing petitioner's instruction No. 7 38

The Court did not commit error in refusing defendant's request No. 8 39

The Court did not commit error in refusing petitioner's instruction No. 13 40

The Court did not commit error in refusing petitioner's instruction No. 14 35, 41

The Court did not commit error in refusing petitioner's instruction No. 15 38

The Court did not commit error in directing a verdict against petitioner's counterclaim 40

Explanation of business conducted on New Orleans Cotton Exchange 41

Discussion of "set offs" 43

Discussion of "ring outs" 43

Discussion of "close outs" 43

Difference between speculation and gambling 47

The Act of Congress does not prohibit speculation, but approves it 54

## Table of Cases Cited

Wilhite vs. Houston, 200 Fed. 390;
Taylor vs. Bailey, 48 N. E. 200;
Bibb vs. Allen, 149 U. S. 481;
Browne vs. Thorn, 272 Fed. 950;
Thorn vs. Browne, 257 Fed. 519;
20 Cyc. 272, and note;
Vance vs. Newman, 72 Ark. 395;
Century Digest, page 2286;
Brown on Statute of Frauds, Section 365;
Lee vs. Vaughn Seed Store, 101 Ark. 69;
79 Central Law Journal, 339;
Bangs vs. Hornick, 30 Fed. 97;
Cleige vs. Laidley, 149 Fed. 346;
Bond vs. Hume, 243 U. S. 15;
Warten vs. Brown, 249 Fed. 48;
Berry vs. Chase, 146 Fed. 625;
Conner vs. Robertson, 55 Am. Rep. 521;
Springs & Co. vs. Carpenter, 154 Fed. 487;
Flower vs. Bush, etc., 254 Fed. 519;
Pierce Oil Corp. vs. Taylor, 264 Fed. 829;
Rountree vs. Smith, 108 U. S. 269;
Chicago Board of Trade vs. Cristie, etc., 198 U. S. 236;
Lehman vs. Feld, 37 Fed. 852;
Board of Trade vs. Kinsey Co., 130 Fed. 507;
9 Corpus Juris 529;
Horton vs. Morgan, 75 A. D. 321;
Higgins vs. McCrea, 116 U. S. 671;

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vs.

CHARLES B. THORN, WILLIAM T. MAGINNIS, SAMUEL C. COLEMAN, and MILES J. KEHOE, Partners, Doing Business as Thorn & Maginnis.....Respondents

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JOS. E. JOHNSON,
of Atlanta, Georgia;

L. C. GOING,
of Memphis, Tenn.;

BEN CRAVENS & IRA D. OGLESBY,
both of Fort Smith, Arkansas,
Counsel for Respondents.

## STATEMENT OF THE CASE

It is perhaps natural that counsel for petitioner should have colored his statement of facts to suit his needs. One can find excuses for such pardonable human failing. But in this case he has exceeded all bounds, and we believe has vio-

lated, perhaps inadvertently, the duty he owes this Court as a member of the bar. His statement of facts fairly bristles with material omissions, inaccuracies and unwarranted inferences. Below we point out some of them in order that the Court may be advised that it will be compelled to go to the record for an accurate statement of the facts.

Take, for instance, the opening statement on page 8 of his brief.

"The petitioner was a farmer and stock raiser, living at Crowder, Oklahoma, prior to his moving to Fort Smith, Arkansas."

This statement omits the fact that petitioner was engaged in the mercantile business at Crowder, Oklahoma (569), and that he was also engaged in the business of buying spot cotton; that he is the president of the Browne-Hinton Wholesale Grocery Company of Fort Smith; that he owns a three-story building in Fort Smith, Arkansas (632), and that he has more than 1,000 acres of land in cultivation (633). The significance of the omissions that petitioner was a merchant and had been engaged in buying and selling spot cotton probably lies in the hope that a plea of wagering would gain more sympathy for a mere farmer and stock raiser than it would for a merchant and spot cotton dealer.

Take the very next statement on page 9 of the brief.

"Prior to the future dealings involved in the controversy, petitioner had made two small deals in cotton futures, one several years before these transactions, and the other only a short time before." And yet, on cross-examination, petitioner admitted that on the very day the loss in controvery was made, he "had some deals with H. & B. Beer, members of the New Orleans Cotton Exchange, and lost money on cotton contracts he had with them." (R. 643.)

As an example of an unwarranted inference stated so as to leave the impression of a fact, consider the following sentence on page 10 of his brief:

"The petitioner, according to his statement, had a net worth of something like $25,000.00 being a hundredth part of the price of the cotton he had bought." (R. 578.)

We search the record on page 578 in vain to find any reasonable basis for this assertion. What we do find is a refusal of petitioner to state what his worth was, explaining the difficulty he would have in doing so, and then this colloquy:

"Q. State whether you had means enough to buy and pay for the amount of cotton that these contracts that were bought, called for?

"A. I don't suppose I had enough to pay for a hundredth part of it, as far as that is concerned, of all that cotton." (578.)

From this answer counsel for petitioner draws the absurd deduction that petitioner was worth $25,000.00, and states it as a fact to this Court. We might just as well say that petitioner is worth a million dollars, basing it upon his admissions on cross-examination, such as his ownership of a three-story business house on Towson Avenue in Fort Smith, Arkansas, his presidency of the Browne-Hinton Wholesale Grocery Company, and his six farms near Crowder, Oklahoma, with more than one thousand acres in cultivation. But our conclusion would be no more justified by the record than the ridiculous conjecture of petitioner's counsel. From our point of view, the financial worth of petitioner is somewhat immaterial, but from the standpoint of petitioner's counsel it is very material. The lower he can figure it, the better it supports his contention that his client was too poor a man to buy and sell the cotton he actually bought and sold.

Again, on page 10 of his brief, he states:

"At 8:30 on the morning of February 1, the petitioner sent a telegram to the respondents directing them to sell one thousand bales of his long cotton at 17.20 cents per pound, and one hundred bales at 17.15 cents per pound."

He neglects to state that this is only his own interpretation of the telegram, but sets it down as if the telegram had no other meaning. And this subterfuge is employed in all the many discussions of the telegram that takes place in various parts of his brief, with the single exception of his final words on page 127. As a matter of fact, the telegram did not use the word "sell" at all, but used the word "stop," which word meant not only "to sell at the prices named, if possible, and if they could not execute it at the figures mentioned they are to execute it on the market at the best possible price." (397.)

Petitioner admits he became more and more acquainted with the terms used about sending telegrams. His knowledge of the meaning of the telegram was a controverted fact, but we established his knowledge of the meaning of the term by the overwhelming weight of the evidence, to say nothing of having put it out of the case here by the verdict of the jury. Of course, if counsel for petitioner had stated the facts as established by the record, this Court would hardly have had the patience to follow his elaborate argument built upon a false premise. These are not all the inaccuracies he has fallen into, but they are sufficient to show the Court that no confidence can be placed in his alleged "Statement of Facts."

I

Petitioner is precluded now from raising any question as to the validity of any part of the Cotton Futures Act, as the validity thereof was not raised by his pleadings in the Trial Court as shown by his answer (17-21.) Nor was any contention of this kind made either in the Trial Court or in the Circuit Court of Appeals. Petitioner did not rely as a defense to respondent's cause of action on the invalidity of the Cotton Futures Act, and the defense set up here is an afterthought, and one arising since this Court decided the case of Hill vs. Wallace. Further on this point, we call attention to the fact that petitioner in his answer relied as a defense upon the fact that the contracts made by respondents for him, did not comply with the Cotton Futures Act, and set out therein specifically wherein he claimed the Act was not complied with (17-21). As further proof that petitioner neither plead nor relied upon the invalidity of the Act, we call attention to the colloquy between the Trial Court, and counsel for petitioner, which is as follows:

"The Court: Have you the record of this case before? At this point, I would like to ask what defense you rely upon, Mr. McDonough?

"Mr. McDonough: I rely upon three defenses, Your Honor, as I construe the answer. First, that

these contracts as offered do not comply with the United States Cotton Futures Act; and then, second, which will make another defense, that they do not comply with the United States Treasury regulations on the subject; third, that the transactions are void because they were dealing in the rise and fall of prices and not intending to deliver the cotton; and, fourth, that the telegram of February 1st did not authorize plaintiffs to sell the cotton at 14 cents." (p. 52.)

Counsel, in answering the Court's question as to what defenses he relied on, stated four defenses. The first, third and fourth of which are raised by his answer, but the second ground of defense can not be relied upon as it was not set up in his answer and the Court's attention and counsel for petitioner's attention was called to this fact at the time (53). No mention is made in petitioner's answer of failure of contracts to comply with the United States Treasury regulations. It is now too late to raise this question and we think that this Court will consider neither the contention now made for the first time that the Cotton Futures Act, or any part thereof, is invalid, nor to a defense which was not pleaded that the contracts violated the United States Treasury regulation. Petitioner's contention that certain sections of the Cotton Futures Act are unconstitutional and invalid, leaving only the taxing feature valid, cannot

be raised for the further reason that any objection as to the unconstitutionality of the Act should have been raised by him and presented by him in clear terms to the first Court, which, in this case, was the Trial Court, and having failed to do so this question is held to be waived. We call attention further to the fact that no assignment of error made by petitioner raises this question.

Counsel for petitioner's contention that the Cotton Futures Act is made invalid in all except its taxing features by the Hill case, should not be seriously considered. He insisted in the Court below that the respondents had laid themselves liable to the tax in Section 3 by violating Section 4, and now he claims that Section 4 is unconstitutional, thus reversing the ground he took in the Court below. If the Act is unconstitutional, it is entirely so, and the tax feature disappears with the rest. The inconsistency of the position of the petitioner is made manifest when we read Section 3 of the Act, as follows:

"Section 3.

"That upon each contract of sale of any cotton for future delivery made at, on, or in any Exchange, Board of Trade, or similar institution, or place of business, there is hereby levied a tax in the nature of an excise tax of two cents for each pound of the cotton involved in any such contract."

The first paragraph of Section 5 is as follows:

"Section 5.

"That no tax shall be levied under this Act on any contract of sale mentioned in Section 3 hereof, if the contract comply with each of the following conditions," etc.

Petitioner takes the position that the contract by respondents for petitioner were void because the excise tax was not paid. It is plainly manifest that Congress had no intention of levying a tax of two cents per pound on any contract for sale or purchase and future delivery of cotton when the contract conformed to the requirements of Section 5.

A comparison of the provisions of the United States Cotton Futures Act with the provisions of the Future Trading Act before this Court in the Hill case, make it manifest that the Act as a whole cannot stand, and particularly Section 3, unless Section 5 is also retained. In the Hill case, Section 3 imposed a tax of 20 cents a bushel on "puts and calls." It was the purpose of Congress to prohibit these pure options, and when the Court intimated that Section 3 was not affected by its conclusions respecting Section 4, it did no violence to the intent of Congress. But were the Court to hold Section 3 of the Cotton Act valid, and the rest of it invalid, it would be an unconscionable piece of

judicial legislation. It would create a result never intended by Congress and in effect would be the making of a new law by the Court. In its intent Section 4 of Grain Futures Act is analagous to the entire Cotton Futures Act. Both seek to regulate futures by threat of taxation. No doubt the Court will, in a proper case, hold the Cotton Futures Act unconstitutional, but when it does, it will kill the taxing feature of it as well as the regulatory sections, because it can be plainly seen that the tax is an inseparable part of the scheme to regulate.

## II

Counsel for petitioner contends that respondents were not authorized to sell two thousand bales of May cotton at fourteen cents on a telegraphic order directing the sale of one thousand bales at 17.20 cents and one thousand bales at 17.15.

The telegram above referred to did not order respondent to "sell." It reads as follows:

"Stop ten at seventeen twenty and ten at seventeen fifteen." (R. 65.) Which means, according to the rules and customs of the New Orleans Cotton Exchange, to sell one thousand bales of May cotton at 17.20 cents and one thousand bales of May cotton at 17.15 cents, at the opening of the market on February 1st, 1917, at the above price if possible, or the next best possible price. It was

not denied by petitioner that such was the rule and custom of the Exchange, but his counsel argues that he should not be bound by rules or customs of that Exchange.

Respondents Kehoe, Coleman and Thorn testified that the above telegram was executed in accordance with the rules of that Exchange. Witness Barkdull, a cotton man of Fort Smith, Arkansas, with whom petitioner talked a great deal, testified that "if the telegram was received before the market opened it would not be the duty of the broker to wire his customer anything. His only duty was to attempt to execute the order if the market opened at a price less than the price stated in the telegram the broker must sell it on the opening of the market at the best possible price." (R. 397.)

The market on February 1st, 1917, opened at 14.50, then 14.00, 13.80, 13.75 and 13.00.

While petitioner admits that he did not think or care anything about the rules of the Exchange (R. 640) the telegrams introduced in evidence alone clearly show that he was familiar with the customs, rules and regulations of the cotton trade. If the telegrams show nothing as to his knowledge of the custom, his own testimony conclusively shows that he was familiar with the terminology and customs of that Exchange.

Petitioner testified that he was in the Fort

Smith Cotton Exchange a good deal of the time looking at the quotations, and sent telegrams from there (R. 639); that he had cotton transactions with the New Orleans Cotton Exchange prior to September 22nd, 1916 (R. 57), and on the last mentioned date dealt in cotton trades with respondents, which transactions required a deposit by him of one thousand dollars; from September 22nd, 1916, to February 1st, 1917, he dealt in large quantities of cotton, and on February 1st, 1917, he had other cotton trades with H. & B. Beer, members of the New Orleans Cotton Exchange (R. 643). He admits he received, read and understood the confirmation slips sent him by respondents (R. 635); he understood **that all sales were subject to the by-laws, rules and regulations of the New Orleans Cotton Exchange** (R. 636); he found out "pretty quick" what "stop" meant (R. 641).

While counsel for petitioner seriously asserts that his client had no knowledge of the custom of the Exchange authorizing respondents to execute stop orders at any other figures than those given by petitioner in his telegram of February 1st, 1917, petitioner admits that after December 29th, 1916, **he knew that it was not always possible to execute stop orders at the figures given.**

Petitioner testified as follows:

"Q. How soon after you got into the market did you learn about stop

"A. I could not say.

"Q. About how long?

"A. Oh, it was not long.

"Q. Just two or three days?

"A. I found that out pretty quick.

"Q. Now you sent that telegram some where in January telling them to close out or to sell the same cotton, or something like that, and they wrote you that they could not stop at that point. Was that the first informaiton you ever had that they could not stop when you said stop? This is the letter of December 29th. This letter reads: 'We beg to confirm telegrams passed between us today. We wish to refer you to your wire asking why your stop order, sell two hundred May at seventeen nineteen was executed at seventeen five.' Now at this time did you not know that it might be impossible to execute your order at the very figure you said?

"A. I don't know that I did.

"Q. Then you knew it from that time on, did you not?

"A. I knew it from that time on. I say before this, yes." (R. 641.)

If on February 1st, 1917, when the market opened at 14.50, respondents had taken the occa-

sion to have wired back to petitioner at Fort Smith, advising him of the market and failing to hear from him had sold his cotton contracts at the lowest figure reached by the market that day, 13.00, then there would have been some cause for complaint upon petitioner's part for not having executed his order according to the rules and customs of the Exchange, but having sold his contracts in accordance with said rules for the best price obtainable, they simply acted for him in good faith and contracted with reference to a subject matter concerning which the usage or custom prevailing he is not only presumed to have known, but according to his own testimony he did know from December 29th, 1916.

As was said by Judge Hook in Wilhite vs. Houston, 200 Fed. 390:

> "An order from a customer to a broker to be executed upon a board of trade contemplates conformity to the rules and customs which prevail there."
>
> "One employing another to act for him in buying or selling in a certain market will be held as intending that the business should be conducted according to the general usages and customs of that market; and this is the rule, whether or not he in fact knows of the custom."
>
> *Tailor* vs. *Bailey,* 48 N. E. 200.

Since petitioner admits he knew that it was

not always possible to execute a stop order at the price given, the instant case falls within the well established doctrine laid down in the Bibb case, which is as follows:

> "It is settled by the weight of authority that where the principal sends an order to a broker engaged in an established market or trade, for a deal in that trade, he confers authority upon the broker to deal according to any well established usage in such market or trade, especially when such usage is known to the principal, and is fair in itself, and does not change in any essential particular, the contract between the principal and agent, or involves no departure from the instructions of the principal; provided the transaction for which the broker is employed is legal in its character, and does not violate any rule, law, good morals or public policy."

See also the opinion of Judge Johnson in Browne vs. Thorn, 272 Fed. 950.

Petitioner's subsequent conduct in failing to make the slightest objection to the manner in which his contracts were disposed of, his failure to deny liability on the theory that his own agents had abused the trust imposed in them, his subsequent offer to pay one-tenth cash and the balance in equal annual installments, clearly show that his assumed plight of "injured innocence" is an afterthought manufactured for the occasion.

## III AND V

Counsel for petitioner urges that "under the Treasury regulations the authorized contracts do not comply with Section 5 of the Act of Congress." This question was before the Court of Appeals at the first trial and decided adversely to petitioner's contention. Said the Court:

> "These slips contain agreements of sale, purchase and delivery of cotton futures 'subject to the by-laws, rules and conditions of the New Orleans Cotton Exchange and subject to the United States Cotton Futures Act' and Section 3, Rule 1 (15) of the Cotton Exchange provides in effect that verbal contracts 'shall have the same standing, force and effect as written ones (if notice in writing conforming to the requirements of Section 4 of the United States Cotton Futures Act) if such contract shall have been given by one of the parties thereto to the other party during the day on which said contract was made or the next day thereafter,' but a verbal contract may lawfully precede a written contract in the purchase or sale of cotton futures under the Act of Congress, and these slips provide that the contracts they evidence shall comply with both the Cotton Futures Act and the rules of the Exchange. There is nothing in the rules of the Exchange cited which prohibits or is inconsistent with such a compliance. The legal presumption is that these contracts were made in accordance with the provisions of both. All that the Cotton Futures Act requires is that the contracts of sale shall be evidenced by written memoranda signed by the parties to be

charged. These contracts are so evidenced, and even if they were verbal contracts before they were evidenced by a writing or the written memoranda. Yet, when they were evidenced thereby within a day or two after the bids were made which preceded the contract they were as complete a compliance with the Cotton Futures Act as they would have been if the written memoranda had been made a few hours earlier. Nothing in contradiction of or inconsistent with Section 5 of the Act, or with the compliance therewith, is found in the rules of the Cotton Exchange the buyers and sellers slips or in the sales or purchases they evidence."

*Thorn* vs. *Browne*, 257 Fed. 519.

And further the Court says:

"There is another reason why the sellers' slips and the buyers' slips signed by the respective parties to be charged were admissible in evidence and would have proved the purchase and sale in the absence of countervailing evidence even if the Cotton Futures Act had required the execution of a buyer's slip and a seller's slip for each transaction, as does Rule 47 of the Cotton Exchange, and that is that the introduction of one of the corresponding slips under such a requirement raises the legal presumption that the corresponding slip in the same terms mutatis mutandis was also executed and delivered, a presumption which ought to and will prevail in the absence of proof to the contrary. Hawes vs. Forster, 1 Moody & Robinson 368, 371, 374; Parton vs. Crofts, 16 C. B. Reports (N. S.) 11, 13, 14, 21; Benjamin on Sales, Fifth Ed., 289, 297, 303, and inasmuch as when one of these slips is

> offered in evidence, the legal presumption is that the corresponding slip expressed the same terms of the sale as those specified in the slip offered (see authorities supra) and the plaintiffs were competent witnesses to prove the fact that they signed slips corresponding to those offered in evidence and delivered them to the other parties to the respective contracts at the times of the respective transactions, it was error to exclude their testimony to that effect."

Counsel for petitioner argues at great length that the Court of Appeals took an erroneous view of the meaning of the words "the party to be charged," and that "under the Treasury Regulations, the offered contracts do not comply with Section 5, of the Act of Congress."

Respondents are not suing to enforce the contracts, but for money paid out for the petitioner's use. The contracts admitted in evidence are "signed by the party to be charged," to-wit, the purchaser, Amy and Strouse, and other members of the Cotton Exchange. This was a full and strict compliance with the Cotton Futures Act. The Act does not require both parties to sign the contract. If it so intended, it would have required the contract to be signed by each party thereto. If Amy and Strouse had refused to receive the cotton bought and to pay for same, and respondents had sued them upon the contract, they could recover. In that event Amy & Strause was the party to be

charged. They could not defend on the ground that Thorn and Maginniss did not sign the contract. All that Section 12 of the Act means is, if a plaintiff seeks to enforce a contract for the sale of cotton for future delivery, in the Courts of the United States, he must show a contract which gives the quantity, the names and addresses of the seller and buyer, which contract shall be signed by the party to be charged, that is, the party against whom the plaintiff is seeking to enforce liability.

> "The party to be charged is the one against whom the contract is sought to be enforced."
>
> 20 Cyc. 272 and Note. See also *Vance* vs. *Newman*, 72 Ark. 395. *Century Digest*, p. 2286 where cases are collected. *Browne on Statute of Frauds*, Sec. 365.
>
> *Lee* vs. *Vaughn's Seed Store*, 101 Ark. 69.

It was a valid contract by respondents for their undisclosed principal. They paid out money at his instance in making the sale for him and he is bound. We invite the Court's attention to 79 Central Law Journal, page 339, where this question is ably discussed by counsel for petitioner, and in which he vigorously maintains, as correct, the principle invoked by respondents. The Court's attention is also called to the very able opinion rendered by the Court of Appeals, through Judge San-

burn, in *Thorn* vs. *Browne*, 257 Fed. 519, on this question.

VI

Counsel's contention that the offered contracts are illegal under the Cotton Futures Act, as well under the rules of the New Orleans Cotton Exchange, is discussed under another title of this brief.

VII

It required thirty-six pages for counsel for petitioner to argue vehemently that "the undisputed and substantial evidence in the case conclusively shows that neither petitioner nor respondents intended any delivery of any cotton." In view of the testimony and the verdict of the jury counsel's statement is as ridiculous as his disconnected, rambling, lengthy and incoherent argument.

Respondent Thorn testified as follows:

"Q. What was your intention at the time you entered into contracts with these various brokers with reference to the circumstances of the cotton on behalf of Mr. Browne?

"A. To make delivery of that cotton bought and to deliver the cotton that was sold.

"Q. You then expected to spot the cotton that you had contracted to buy?

"A. We did.

"Q. And to deliver the cotton you had sold?"

"A. We did." (R. 417.)

Petitioner Browne testified as follows:

"Q. Mr. Browne, you didn't investigate and ask anybody what it meant that cotton was purchased in accordance with the Rules of the Exchange—you did not ask anybody what that meant?

"A. No.

"Q. And so you did not know it?

"A. No, I did not think or care anything about it. I understood I could take my profits if I wanted to and if I lost I would lose my margin. I don't care anything about the rules down there and did not know that I would ever be interested in them.

"Q. Insofar as the firm of Thorn & Maginnis is concerned you never at any time, by letter, telegram or personally, informed either member of that firm of your intention to gamble and not to deliver or accept the cotton bought or sold, did you?

"A. I never told them I was gambling. I was speculating on the market." (R 640.)

In view of the above testimony it is difficult to see how counsel can say to this Court that "the

undisputed and substantial evidence in the case shows that neither petitioner nor respondents intended any delivery of any cotton." The rules of the Exchange prohibit gambling.

The petitioner, having asserted that the transactions were mere gambling ones, the burden was on him to prove it. The question of whether or not the transactions were gambling ones was submitted to the jury under proper instruction and the jury decided against the petitioner. Said the Court of Appeals in discussing this phase of the case, 272 Fed. at page 952:

> "The business was conducted by telegrams and letters between the parties. Plaintiffs had no interest in the purchases and sales they were directed to make other than as defendant's brokers. Notwithstanding the vehemence of counsel for the defendant, we do not think the correspondence of the parties indicate that the transactions were not intended to be legitimate. The contracts were fair on their face and presumably lawful, and the defendant, having asserted they were wagers upon the fluctuation of the market and were gambling contracts, the burden was on him to prove it. *Clewes* vs. *Jamieson*, 182 U. S. 491."

The above Court adopts the following language from the *Wilhite* vs. *Houston* case, supra, which is as follows:

> "Nothing appeared in the correspondence of the parties or their conferences before the controversy arose to indicate that the trans-

> actions were not intended to be legitimate. The mere fact that no grain was actually delivered or received but that the sales and purchases were set off against others according to the custom of the Exchange, did not show that they were illegal."

Counsel for petitioner states that it is the duty of the Court to look beyond the contracts, rules and customs of the Exchange and denounce it as a gambling venture. Judge Brewer, in *Bangs* vs. *Hornick*, 30 Fed. 97, very pointedly answers this question against petitioner as follows:

> "Counsel for defendants say that it is the absolute duty of the Court to denounce this transaction unless it clearly appears that it was a valid and honest one. I think the duty of the Court is precisely the reverse and that it is the duty of the Court to uphold it unless it appears that it was an invalid and dishonest one."

While it is true that Courts will not lend their aid to a recovery based upon losses arising out of gambling transactions, it is also true, as said by Judge Sanborn in *Claige* vs. *Laidley*, supra, that:

> "It is also the policy to enforce as valid contracts and one who would avoid his agreements and escape his obligations by his own wrong should be required to establish it by clear and convincing proof."

Bearing in mind that the transactions occurred in New Orleans, the legal consequence of these transactions are governed by the laws of Louisiana.

"As regards their legality, sales and purchases of grain in the Chicago market were governed by the laws of Illinois, those in Kansas City market by the laws of Missouri." *Wilhite* vs. *Houston*, supra.

See also

*Bond* vs. *Hume*, 243 U. S. 15;
*Warlten* vs. *Brown*, 249 Fed. 48;
*Berry* vs. *Chase*, 146 Fed. 625.
*Conner* vs. *Robertson*, 55 Am. Rep. 521

See also the opinion of Judge Johnson delivered in *Browne* vs. *Thorn*, supra.

In Louisiana a contract of purchase or sale of a commodity for future delivery is void if both parties intend it as a wager upon market movements to be settled by differences, but not if only one of them has that intention. This is the general rule in the absence of statute.

Counsel for petitioner contends that the undisputed evidence shows a gambling venture and cites a large number of cases to sustain his remarkable assertion. The analysis of a few cases cited by counsel for petitioner will disclose that the cases upon which he relies are not in point. *King* vs. *Johnson*, 159 Pac. 531, merely decides, quoting syllabus:

> "That an agent cannot recover commissions for an illegal sale of lands in violation of Act

March 15, 1917, Sections 8 and 9, which prohibits the sale or offer for sale of lands by reference to an unrecorded map or plat."

In *Medlin Milling Co.*, vs. *Moffatt Commission Co.*, 218 Fed. 686, cited by petitioner, plaintiff sued its treasurer and the defendant company for money unlawfully and by collusion and conspiracy diverted from plaintiff in gambling transactions. The Court decided the case on the Missouri statute, which declares the contract void **if either of the parties to it had no intention to receive or deliver the property.**

In *Partridge* vs. *Cutler*, 48 N. E. 125, defendant had on hand large quantities of grain contracts and plaintiff demanded of defendant that he put up additional margins, which he refused to do, alleging that there was an agreement between them that he should have credit to the extent of one hundred thousand dollars. All the Court decided in that case was that the Court's instruction which told the jury that if plaintiff made purchases and sale of commodities for future delivery for the defendant on the Chicago Board of Trade, in accordance with its rules and regulations, they should recover, was error, since the instruction omitted material and controverted facts which he should have submitted to the jury.

In *Weare Commission Co.*, vs. *People*, 209 Ill. 528, 70 N. E. 1076, the company was indicted and convicted for running a bucket shop in Princeton,

Ill., contrary to the criminal statute. Defendant introduced no testimony except certain rules and by-laws of the Board of Trade of Chicago. The Court held that where such transactions were carried on in the office of some particular person and with his aid and concurrence a presumption of his knowledge of what is going on, is made by the law without any requirement of proof on the part of the prosecution.

In *Jamieson* vs. *Wallace,* 167 Ill., 388; 59 Am. St. Rep. 302, one of the appellants lived with appellee, a woman of little or no experience in business and a very limited amount of money. Appellee testified that she was told by one of the appellants that he could make some money for her by speculating in stocks. The Court held that from her relations to appellants and from all the circumstances disclosed by the proof that he knew she was dealing in gambling transactions.

*Stafford Grain Co.,* vs. *Rock M. & E. Co.,* 146 Pac. 1139, was an action by plaintiff to recover the price of two carloads of wheat sold to the defendant. Plaintiff, a co-operative farmers' association, had been selling grain to the defendant for about five years. The amounts sold amounted to about two hundred cars. Plaintiff's manager, Van Fleet, who was speculating in wheat, requested defendant, instead of remitting as had been the custom

for five years, to send the money for the two cars to Goffe & Carkaner, who appears to have been running a bucket shop in defendant's building. Geo. Ganeo was conducting the business for defendant, and Paul Ganeo was running the bucket shop. Van Fleet testified that in speculating and advancing money on margin "he usually talked to Paul Ganeo and sometimes with Geo. Ganeo and that he directed one or the other of them to turn over so much money on margins."

Counsel cited *Conner* vs. *Robertson*, supra. This opinion sustains practically every contention made by respondents in the case at bar. Petitioner's contention that he was gambling (although not known to respondents), and that he would have demanded from respondents his money had he won, is answered by the above Court as follows:

> "Defendant's own testimony is sufficient to show that he should have spared his conscience the strain of making the first defense and it needs no further notice."

In *Williamson* vs. *Majors*, 169 Fed. 754, plaintiff was a real estate man living at Memphis, where the speculations occurred. Majors knew that Williamson was a real estate man and not engaged in the cotton business. All of the transactions were given in person by plaintiff to Majors. Majors knew he was gambling. Majors, who appears to have been running a bucket shop, testi-

fied that he advanced Williamson about forty thousand dollars to put up as margins "until Williamson could see what the census report would be."

The case of *Carpenter* vs. *Beal-McDonald & Co.*, 222 Fed. 452, does not pretend to cover the questions involved in the case at bar.

In *Wolfe* vs. *Andrews*, 192 S. W. 266, the contract on its face shows it to be in violation of the statute.

*Kirkpatrick* vs. *Richer*, 91 S. W. 51, does not in any manner sustain petitioner's contention.

In *Orvis Bros.* vs. *Holt-Morgan*, 91 S. E. 948, the case was reversed on account of improper instructions.

*Cohn* vs. *Brinson*, 73 So. 59, is not in point, since both Brinson and the bank admit that Brinson was gambling on the rise and fall of the cotton market. The above case was a question of loaning money for an illegal purpose, and they admit the facts were that both parties knew that Brinson was gambling.

In *Harnett* vs. *Wilson*, 161 Pac. 281, it was admitted that defendant was running a bucket shop, that he was not a member of any exchange and that it became necessary to get his customers drunk in order to rob them. It was also admitted by defendant's agent, Marshall, that it was a bucket

hop where only margins were played, and that he nformed the plaintiff that it was "just like a ook" or "a horse race."

Since the undisputed testimony shows that the ansactions were executed in Louisiana on the New rleans Cotton Exchange in conformity with the les and customs of said Exchange, and that re-ondents intended to deliver the cotton if the ntracts were carried to maturity, the Court ould have been warranted in directing a verdict r the respondents.

*Springs & Co.*, vs. *Carpenter*, 154 Fed. 487; *Flower* vs. *Bush & Witherspoon Co.*, 254 Fed. 519.

The Court, however, submitted the case to the y under proper instructions, which told the jury t if they believe by a preponderance of the evi-nce that at the time of the making of the con-cts it was the intention of Browne and the intiffs that there should be no delivery upon the es fixed for such delivery in the contracts, but rely the receipt of the difference between con-ct price and the market price the contract was gal and plaintiffs could not recover. But if it s the intention of Browne not to receive the cot-bought and not to deliver the cotton sold by n, but it was the intent of Thorn & Maginnis t the cotton bought by Browne should be de-

livered to him and that the cotton sold by Browne should be delivered by him, then the mutual intent not to deliver did not eixst and the plaintiffs should recover (R. 651-2). This question then becomes one of fact for the jury. This Court will not on appeal weigh conflicts in the evidence or credibility of the witnesses. *Pierce Oil Corp.* vs. *Taylor*, 264 Fed. 829.

The most astounding legal absurdity is announced by counsel for petitioner in saying that as Browne did not intend to deliver or receive any cotton his legal intention amounts to this: I employ you to make a contract for me wherein you bind yourself as principal without disclosing me, yet I am not liable to you because I had a gambling intention which you knew nothing about. The very opposite to petitioner's contention is the law. Since Browne admits that he did not communicate his illegal intention not to deliver the cotton to respondents, the law does not in the absence of proof presume that the parties are gambling. As was said in *Conner* vs. *Robertson*, supra,:

> "The law presumes that the true intention of the parties is that which is expressed upon the face of their contract, and also that men in their business transactions do not intend to violate the law, make contracts for the enforcement of which the law refuses a remedy."

Petitioner attempts to stamp the transactions as illegal because there was no testimony intro-

duced to show what the intention of the other principals was. It was not disputed that the other principals with whom petitioner dealt were members of the New Orleans Cotton Exchange and the contracts that they entered into were in conformity with the rules and customs of that Exchange. The contracts were therefore fair on their face and presumably lawful, and the law does not presume that the parties were gambling. If the petitioner believes that the other parties to the contract were gambling he should have introduced their testimony at trial. The burden of proving the illegality of these transactions was on the defendant. As was said by Justice Miller in *Rountree* vs. *Smith*, 108 U. S. 269:

> "The other party to these contracts, or rather parties, for the contracts were numerous, was not introduced nor their testimony given, and there is no direct evidence that any of them either bought or sold with any other purpose than to perform the agreement as its terms bound them."

Counsel for petitioner contends that because respondents purchased for petitioner during a period of four months a large quantity of cotton, which contracts were settled by payment of differences, that this fact proves the particular contracts sued on were gambling transactions. There is no merit in his argument, as shown by the following decisions:

*Cleige* vs. *Laidley*, supra.

*Chicago Board of Trade* vs. *Cristie Grain & Stock Co.*, 198 U. S. 236;

*Lehman* vs. *Feld*, 37 Fed. 852;

*Board of Trade* vs. *Kinsey Co.*, 130 Fed. 507;

*Rountree* vs. *Smith*, 108 U. S. 269.

He also contends that because many sales and purchases were made conditioned on the loss or sale by stop at a certain figure that this of itself is conclusive evidence that it is gambling on the rise and fall of prices. Again counsel for petitioner falls in error. He cites no authority for holding that a stop order is illegal.

9 C. J., at page 529, under the head of Stop Orders, says:

> "A client may order that a sale be made whenever the stock reached a certain price or on the event of certain conditions, and the broker must sell whenever the price or condition occur or render himself liable for any resulting loss, and client's order to buy-in May also begin in the form of a stop order."

See also *Horton* vs. *Morgan*, 75 A. D. 321, where the Court gives an illustration of a stop order.

VIII

The question argued by counsel for petitioner under this title is discussed by us under title VII.

IX

Petitioner's contention that the Court erred in holding in his charge to the jury that the intention not to deliver must exist in both petitioner and respondents is discussed elsewhere in this brief.

X

Counsel for petitioner contends now for the first time that since the petitioner deposited money in a bank in Arkansas to the credit of respondents this transaction necessarily makes it an Arkansas contract and in violation of the Arkansas law. He cites no law, and of course cannot do so, to uphold such an absurdity. The depositing of money had nothing to do with the contract made in New Orleans. It was mere incident that followed the contract. The contract could have been fully performed in New Orleans without the deposit of money in Arkansas .

XI.

Petitioner's argument that the United States Court will not enforce in the State of Arkansas a contract which is illegal under the laws of that State even though the contract be valid in Louisiana is answered under titles VII and X.

XII.

Counsel says that the Court erred in giving the jury the following instructions:

> "Reference was made in the testimony to what is termed hedging. Hedging is a means by which collectors, owners and exporters of cotton or other products and manufacturers, who make contracts in advance for the sale of their goods, secure themselves against the fluctuations of the market by counter contracts for the purchase or sale, as the case may be, of an equal quantity of the products or of any material of manufacture. Such contracts are legal, and if you find from the testimony that the contracts in this case were hedging contracts then they were legal and enforcible, or if you find that the plaintiff believed that they were hedging contracts they were legal and enforcible."

Because the Act does not specifically authorize a hedging contract he argues for this reason that "it is necessarily a violation of the law." It does not necessarily follow that because the Act does not specifically authorize hedging that "the contract is a violation of the law." It it were lawful to hedge prior to the enactment of the Act and the Act does not prohibit it the contract is not a violation of the law. Hedging does not make an illegal contract. It is no more damnatory than is insurance. The instruction complained of is the law as declared by Justice Holmes in Chicago *Board of Trade* vs. *Christie, etc.,* supra.

The position is not well taken for the further reason that this matter was brought out by the petitioner on cross examination of witness Thorn.

If it was error it was an invited one and the petitioner cannot complain.

XIII.

The alleged error of the Court in refusing instructions based upon the Cotton Futures Act requested by counsel for petitioner are discussed elsewhere in this brief.

XIV.

The Court should have refused petitioner's request No. 7. A sufficient answer to this argument may be found in the case of *Thorn* vs. *Browne,* 257 Fed. 519, and *Hutton* vs. *Terrell,* 255 Fed, 860.

XV.

The Court did not commit error in refusing petitioner's request No. 8. There is no testimony on which to base this instruction "to stop his losses on one hundred bales at 17.20 and one hundred bales at 17.15." There is no evidence that he had any loss at 17.20. As a matter of fact, he had a profit even at 17 cents. Witnesses Kehoe, Coleman, Thorn and Barkdull testified that petitioner's telegram of February 1st, 1917, reading "Stop ten at 17.20 and ten at 17.15," meant, according to the rules and customs of the New Orleans Cotton Exchange to sell at the opening of the market at these prices, if possible, or the next best possible

price. Petitioner offered no proof to contradict the above witnesses.

XVI.

Petitioner's request No. 13 was covered in the trial Court's general charge.

XVII.

The Court committed no error in refusing petitioner's request No. 14. This question has been previously discussed by us.

XVIII

This question was fully discussed under title XII of our brief.

XIX.

The Court did not commit error in refusing the defendant's right to recover on his counter-claim. Petitioner admits he was gambling.

As was said in *Higgins* vs. *McCrea*, 116 U. S. 671:

> "We do not see on what ground a party who says in his pleadings that the money which he seeks to recover was paid out for the accomplishment of a purpose made an offense by the law and who testified and insists to the end of his suit that the contract on which he advanced his money was illegal, criminal and void, can recover it back in a Court whose duty it is to give effect to the law which the party admits he intended to violate."

Since Browne admits he was gambling the Court committed no error in instructing the jury to find against him on his counterclaim.

## CONCLUSION

As this Court takes judicial notice of the manner in which business is conducted on the great future Exchanges of the country we deem it proper to set out here some of the facts of common knowledge respecting the New Orleans Cotton Exchange and the system of making cotton contracts for future delivery in general.

The New Orleans Cotton Exchange is a corporation limited to 500 members. The Exchange does no business itself. It merely furnishes the means whereby its members can regulate themselves under the sanction of law. Of the membership the most important to the public are those who make contracts on the Exchange for non-members. These are called commission merchants, or commission houses, and constitute a small proportion of the total membership. Of such were the respondents.

The members deal with each other as principals without disclosing the names of their customers. This practice is true of all the great grain and future Exchanges of the world and has been so from their origins. The broker holds himself out to his customer as responsible for the faithful execution of the contract notwithstanding any default or neglect of the broker with whom he made the contract. In thus assuming liability to his

customer for a default not ordinarily chargeable to an agent, he exacts the reciprocal right to substitute other parties in the place of the one with whom he originally contracted, and speaking in legal terms this unusual guaranty to his customer is the consideration for the right to substitute new parties on the other side of the contract.

The contracts are all executed on the floor by open outcry. None can be made secretly. On the same day as made they are reduced to writing and signed by both parties. For convenience they sign a short form or slip carrying all the obligations of the longer form set out in the rules. As soon as a contract is made the price is posted on a bulletin board and flashed by telegraph over the country. The Exchange isues a bulletin each day showing the time at which every transaction was made.

The contracts are for 50,000 lbs. of cotton for delivery at a time not more than 11 months distant and they are sold in cents and hundredths of a cent per pound. The rules and by-laws of the Exchange are an integral part of them and they are also made subject to the United States Cotton Futures Act. Under that Act the cotton tendered on contract must be graded by agents of the Department of Agriculture and must be within the grades specified by the Act, and the differences between the grade called for by the contract which

is middling and other grades tendered must be settled for according to the method prescribed by the Act, but the other details respecting delivery are largely controlled by the rules of the Exchange. The rules of the Exchange show that the contract specified by the Cotton Future Act has been adopted by the Exchange and were the Act, for any reason held invalid, that fact would not necessarily destroy the contract itself. It would then have to be judged on its merits as a contract duly adopted by the Exchange.

Contracts, after being brought into existence, are settled in just two ways, by actual delivery of the cotton, or by set-off. Actual delivery needs no explanation. But the settlement by set-off as it is the cause of all adverse criticism, needs careful attention.

Set-off occurs where two brokers are obligated to deliver to each other the same amount of cotton at the same time. "Ringing out," which is but another name for set-off, occurs where three or more brokers are similiarly obligated This Court has explained and illustrated both methods of settlement in Christie vs. Board of Trade, Supra and declared in that opinion that it serves the same purpose as would an actual delivery.

When a customer having bought a contract, later on sells a contract for delivery at the same time, it is called in the vernacular, a "close out."

A mistaken impression prevails that the customer actually closes out or terminates the contract he first made. This is not the fact. The effect of his second contract is to make a new but exactly opposite contract, which, so far as the customer is concerned, can be used to offset the first contract. But the broker may be left, for a time at least, obligated to both.

The critical would probably argue that the customer should not be allowed to make a counter transaction because the result of it is to permit him to get in and out without taking or making an actual delivery of the cotton. But it may be asked, if one is to be permitted to buy a contract, why should not one at some later time be allowed freely to sell a contract. And if it be answered, as of course it ought to be answered, that he should be free to either buy or sell, then what purpose would be served, in a case where he had bought and sold the same quantity for the same time of delivery, to compel him to deliver to himself and to receive from himself? And which would he first do? Both law and common sense requires him to do neither. Yet we admit that there are critics who would contend that in such a case, in order to obviate suspicion of his motives, the customer ought to be made to lug the actual cotton down to the Exchange and deliver it to himself.

The fact that contracts may be offset is re-

sponsible for the plea of wagering made in this case and all other cases of a similar kind. In fact all the evidential facts relied upon to prove a wager must at least be tested by the question of the legality or illegality of set-off.

We say this despite the fact that none of the physical facts attending the making or settling of contracts has anything to do with determining the question of their legality. That is to be determined by such intangible things as thoughts, motives, intentions, and what not. Wagering is a state of mind existing independently of the contract itself. In order to make them a wager we must import into them a motive to be found only in the minds of the parties to it. But without the physical fact of set-off the mental state of wagering, if there be such a thing, could not exist. It might well be called the proximate cause without which the mental disorder could not come into being. So, while apparently having nothing to do with the question, set-off has in truth all to do with it. It is the invisible germ that generates the disease.

Let us explore this idea a little further. The petitioner shows that he has settled previous contracts made through respondents without making or taking an actual delivery; his purpose was the same with respect to the cotracts in controversy, and argues from this premise that respondents

should have known that his intention was not to take or make delivery in any event. But this contention does no more than raise the question of the legality of setting off the contracts. Petitioner would be the first to admit that if actual delivery had in fact been made, he would have no cause of complaint. But he complains of settlement by set-off which this Court has held to answer every legal purpose of an actual delivery. Petitioner could not afford to admit this self evident proposition. To do so would destroy his theory. But it demonstrates that set-off is the root of the matter.

Though deprived of any beneficial implication that might flow from proof of the fact that no delivery was made, that a settlement by offsetting is not contrary to law, the petitioner contends that he is entitled to show such words and acts as pasesd between himself and respondents that might tend to show a guilty purpose on his part and knowledge of it on the part of respondent. We do not deny his right to do so, if any such can be found. But after all, if any such could be discovered, and we submit that there are none in the record, they would tend to prove but one thing; that the contracts were offset. From whatever angle one views it, it comes down to a consideration of set-off. Set-off makes speculation possible.

But speculation on one of these great future Exchanges is not the same thing as gambling.

Through the facilities of the great modern future contract exchanges the great staple commodities such as grain and cotton move from producer to consumer among what may well be called a speculative route. The speculator pours in his money, in the hope of gain, and thus carries a considerable part of the risk as the crops move from a raw to a finished state. He does not furnish the vast sums necessary to finance the movement; the banks do that; but he does furnish the money and the indirect ownership that carries the risk. The risk must be carried by some one. Hence the exchange and hence the speculator.

Now what is a speculation? It is trite to say that it is the buying of something in the hope that it will advance in value, or the selling of something from the fear, or hope, that it will decline. But when we come to consider the definition of a speculator we find some authorities inclined to impute to him not alone these simple motives, but if he is really to be worthy of his name, a kind of superior intelligence and competency in the doing of them. In other words he is a person endowed with a special ability to forecast the future, and what he does is speculation because of these particular mental traits. Under this definition the less competent necessarily must be gam-

blers, and the things they do, gambling. But the difference between gambler and speculator is not purely mental, a mere difference in the quality of their minds. There is a difference and it is to be found in the effect of what they do and not by whom it is done.

Gambling is the passing of money from one person to another upon the happening or not happening of some event. The money is invested in nothing, not even the event. It does not influence the event one way or the other. One person wins what the other person loses.

In speculation money is invested in the right to property and what happens to that property thereafter is the thing that counts. In gambling what one loses another necessarily gains while in speculation what one loses nobody may gain and what one gains nobody may lose. Here is the essential difference between the two. This vital distinction is the crux of the whole matter because it shows the difference between wagering or gambling contracts and valid, or speculative transactions.

Speculation on the cotton Exchange can best be illustrated by examples, and we shall now set forth several in an effort to show that a speculator thereon may either win or lose money and no one else be effected adversely. At the same time we will

grasp the opportunity to illustrate a "hedge" contract.

Let us assume that at a little town in Georgia ten farmers drive in the same day; each with ten bales of cotton, and sell it to the local merchant at the prevailing market price of 16 cents per lb. They turn over the actual cotton to the merchant, take their money and go home. Now can it be argued that these farmers have any further interest in this 100 bales of cotton? We ask this question, because some doubting Thomas will want to return to the farmers and contend they have lost any money the speculator may make out of it. But when you ask them if the converse of the proposition obtains, that is to say, should the farmers reimburse the speculators for any money they may have lost on the cotton the fallacy is immediately exposed. Forward then with the illustration.

The local merchant having bought this cotton at 16 cents and not being able to sell it to an exporter or a mill at the moment, and wishing to protect himself against a decline in price, sends an order to H & Co., members of the Cotton Exchange, to sell 100 bales for January delivery at the market, which means at the price obtainable, and it is done at 17 cents per lb. The local merchant has "hedged."

We will now introduce a speculator and give him an opportunity to show the useful function he

plays in the system. Let us suppose that he lives in Chicago and has no sort of interest in cotton except as it may furnish an opportunity for speculation. He, therefore, sends an order to B. & Co., members of the Exchange, to buy 100 bales for January delivery; the order arrives at the same time as the local cotton buyers, and the speculator becomes the purchaser of the 100 bales sold by the Georgia cotton merchant. Now, as long as the parties hold their respective positions, the speculator carries the risk of the 100 bales of spot cotton, and anything that happens to the value of it, will affect the speculator alone. Of course he does not know that he owns the equity in one hundred bales of cotton located way down in Georgia. He may think, as some of them in their ignorance do, that the contract represents no more than a mere scrap of paper.

Having got the Georgia merchant and the Chicago speculator together at 17 cents we will march on a few days and give the cotton market a chance to advance to 18 cents per lb. This price give the sspeculator $500 profit, less the commision and the government tax, which expenses we will throw out of the example in order to simplify it. This price also gives the Georgia merchant $500 loss on his future contract, but if the parity between spots and futures has been maintained, he has a profit of $500 in his spots, or in other words, he is just where he started. We will assume

that the speculator decides to take his profit and accordingly sends an order to sell 100 bales of January. At the same time, the Georgia cotton merchant, having sold his 100 bales of spot cotton to an exporter at a profit over the purchase price of $500, also sends an order to his broker to buy 100 bales of January. To make the example easier of comprehension, we will have them again cross each other at the price of 18 cents per lb. This winds up the transaction and leaves us to take stock of the result.

We find that the speculator has made $500 and no one has lost it. It is true that the Georgia merchant lost $500 on his future contract but he makes it back on his spots. He comes out of the transaction even.

The example may also be reversed to show the speculator losing $500 and nobody gaining it. All that is necessary to reach this result is to suppose that the two parties mentioned closed out their futures at 16 cents per lb., instead of 18 cents. In this case the speculator would have lost $500 and the merchant would have gained that amount from his future contract only to lose, however, an equal amount on his spots.

The foregoing examples, showing as they do, how the speculator can both win or lose, and no one else be affected to his disadvantage thereby; also makes manifest the beneficial role played by

the speculator in the movement of the cotton from producer to consumer.

It may be true that when speculator meets speculator on the exchanges no economic good results; that this situation would bring about in effect the same result as would a wagering transaction. But it may be said that this possibility inheres in the very nature of the problem. So long as speculation is permitted, or is suffered, because of the benefits it confers by broadening the market—furnishing buyers and sellers when they are most needed—an excess of speculators will at times be found among the traders. Human ingenuity has not as yet been able to devise a scheme to limit speculation to the amount required to meet business needs without possibility of excess. The difficulty of obtaining such an ideal balance is manifest. The flow of both hedging contracts and speculative contracts is naturally variable. At times the weight of hedging contracts may be greater than the market can absorb without a disturbance in price. At such times the market suffers from a lack of speculative absorption. At other times, particularly in great upward movement, there is an excess of speculation and no doubt such occasions furnish frequent examples of speculator dealing with speculator. Since, however, speculation contributes to the market a real economic good, the mere fact that at times

it exceeds the requirements, by bringing into being contracts that possibly perform no useful function, should not lead to the condemnation of the entire system. Properly speaking, however, this is a question for the law makers and not for Courts. And we shall see that Congress has answered it.

The law in such cases as this is, that the illegality of the contracts must be determined by the ascertainment of a wagering purpose existing in the minds of the petitioner at the moment of making the contract, and a contemporaneous knowledge of such a guilty purpose by his agent, the respondents. Now, we must take the law as we find it, and probably we should not complain of it in this case, because the petitioner has failed to meet the test, but in this high Court, where precedents may be corrected, we feel obliged to take this opportunity to observe that the rule ought to be modified. The test should be, did the agent make valid contracts. And if found to be valid, the principal ought to be estopped from claiming that, nevertheless, he made them with a guilty purpose. The present rule invites dishonesty and provokes confusion. The agent may have made a contract legal in every respect and in itself subject to no just criticism, but in an action, such as this, to recover for services and money paid out on such contracts, he may be met, as here, with the defense that notwithstanding the validity of the contracts when tested independently, they

are made illegal because of an infirmity in the principal's mind.

Under the present rule, principal A. can make a contract with principal B. through their respective brokers, and in an action by the brokers against each of them, A. may be found to have had a wagering intent, and his obligation therefore invalid, while B may be found to have had a bona fide intent, and his obligation therefore valid. Such a situation is absurd and the rule should be clarified.

Counsel for the petitioner frequently asserts in his brief that the Cotton Futures Act was designed by Congress to suppress gambling in futures. Conceding the fact that he uses the word as a synonym for speculation we point out that there is not a word in the Act to support this contention as to either gambling or speculation. A reading of the literature of the subject while it was being considered by Congress, as well as the Act itself, will disclose the actual motive to have been the elimination of certain low grades of cotton then tenderable on contract and also the fixing of an elastic instead of a rigid method of ascertaining the difference to be paid for cotton grading above or below the basic grade, middling. The real, though perhaps not clearly expressed purpose, was to make a contract that would sell above the price of spot cotton and thus exercise

a beneficial influence upon the latter instead of selling below spot cotton and exercising a depressing influence upon it as was then the case. A further reading of the history of the subject covering the years preceding the first passage of the Act (in 1914) will disclose that the House did, in that earlier period, seriously contemplate the restriction of speculation. The House passed two Acts containing such restriction but they failed in the Senate. In the meantime elaborate hearings were held by committees and a searching investigation of the cotton exchange was conducted by the Department of Agriculture. These investigators all reported that a suppression of speculation on the Exchange would probably result in greater harm than good to the producers of cotton. The sentiment against speculation not only subsided but veered completely around. In place of suppressing cotton futures Congress now undertook to make them more valuable. In place of suppressing speculation, it approved it. The same thing is true of the grain futures Act which the Court held unconstitutional in *Hill* vs. *Wallace* at the last term. It is also true of the grain futures Act which was re-enacted by Congress in September 1922. The debates in Congress frankly disclose that there was no purpose to prohibit speculation. The debates are unnecessary, however, as the wording of the Acts show there was no such purpose.

It is perfectly apparent that Congress has come to the solemn conclusion that speculation on the future exchanges should not be unduly hampered. It can be fairly said that the policy of Congress is to approve speculation on these future exchanges.

It is respectfully submitted that the cause should be affirmed.

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## BROWNE *v.* THORN ET AL., PARTNERS, DOING BUSINESS AS THORN & MAGINNIS.

ERROR AND CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 88. Argued October 20, 1922.—Decided November 13, 1922.

1. In an action by brokers to recover from their customer the balance of their account for purchases and sales of cotton made on their exchange pursuant to his orders, it is not a defence that the transactions were gambling because he had no intention to receive or deliver the actual cotton, if his intention in that regard was not disclosed to the brokers. P. 139.
2. Hedging—a means whereby manufacturers and others who have to make contracts of purchase and sale in advance, secure themselves against fluctuations of the market by counter contracts—is *prima facie* lawful. P. 139.
3. Section 4 of the "United States Cotton Futures Act", must be read in the light of construction of similar language of the Statute

of Frauds, and does not require that bought and sold notes should name the principals and be signed by both brokers.[1] P. 140.

4. Evidence of an understanding between the parties *held* to justify interpreting a telegraphic "stop" order from a customer to his brokers as directing sale of his cotton at the prices specified in the order, or, if those could not be got, at the next best price possible. P. 140.

272 Fed. 950, affirmed.

CERTIORARI to a judgment of the Circuit Court of Appeals, affirming a judgment for the plaintiffs in an action by brokers, to recover from their customer, Browne, the balance of their account for purchase and sale of cotton, on a cotton exchange of which they were members. The case went twice to the court below. See 257 Fed. 519; 272 Fed. 950.

*Mr. James B. McDonough* for petitioner.

*Mr. Ira D. Oglesby* and *Mr. L. C. Going*, with whom *Mr. Jos. E. Johnson* and *Mr. Ben Cravens* were on the brief, for respondents.

MR. JUSTICE HOLMES delivered the opinion of the Court.

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[1] Act of August 11, 1916, c. 313, Part A, 39 Stat. 446, 476.

"Sec. 3. That upon each contract of sale of any cotton for future delivery made at, on, or in any exchange, board of trade, or similar institution or place of business, there is hereby levied a tax in the nature of an excise of 2 cents for each pound of the cotton involved in any such contract."

"Sec. 4. That each contract of sale of cotton for future delivery mentioned in section three of this Act shall be in writing plainly stating, or evidenced by written memorandum showing, the terms of such contract, including the quantity of the cotton involved and the names and addresses of the seller and buyer in such contract, and shall be signed by the party to be charged, or by his agent in his behalf. If the contract or memorandum specify in bales the quantity of the cotton involved, without giving the weight, each bale shall, for the purposes of this Act, be deemed to weigh five hundred pounds."

This is a suit brought by the respondents, cotton brokers, to recover the balance of an account for the purchase and sale of 2,000 bales of cotton on the New Orleans Cotton Exchange. At a first trial a verdict was directed for the defendant on the ground that broker's seller's slips coupled with oral evidence that corresponding buyer's slips were executed, or vice versa, were not competent evidence of the transactions, under the United States Cotton Futures Act. Act of August 11, 1916, c. 313, Part A, § 4, 39 Stat. 446, 476. The judgment was reversed by the Circuit Court of Appeals after a very satisfactory discussion. 257 Fed. 519. There followed a second trial in which the verdict was for the plaintiffs and a judgment, sustained by the Circuit Court of Appeals, 272 Fed. 950, that is brought here by writ of error, supplemented by a petition for a writ of certiorari. There is no ground for the writ of error on the record, although the plaintiff in error now, in view of *Hill* v. *Wallace*, 259 U. S. 44, argues that the Cotton Futures Act is void except in the taxing provision enacted as an alternative to compliance with its regulations. A petition for certiorari was granted at the October Term, 1920, 256 U. S. 689.

The first ground relied upon for the petition is that the transactions were gambling transactions. That was the petitioner's contention at the trial, but to put it at the lowest, there was evidence to the contrary, the question was left to the jury with instructions that if the plaintiffs knew that the defendant had no intention to deliver or receive the actual cotton they could not recover, and the jury found for the plaintiffs. The defendant contended that his undisclosed intention was enough to defeat the plaintiff's claims; but that is not the law. It is objected that the judge instructed the jury that hedging was lawful, hedging being explained as a means by which manufacturers and others who have to make contracts of purchase or sale in advance secure themselves against the fluctuations

of the market by counter contracts. Prima facie such transactions are lawful. *Chicago Board of Trade* v. *Christie Grain & Stock Co.*, 198 U. S. 236, 249.

The bought and sold notes executed on the Exchange mentioned only the names of the brokers and neither was signed by both the brokers. It is said that the act of Congress, § 4, was not satisfied. We agree with the Circuit Court of Appeals that the language of § 4 of the Cotton Futures Act must be read in the light of the decisions upon the similar language of the Statute of Frauds and that the notes were sufficient; assuming without discussion that in this case it was necessary to prove that § 4 was followed. See *Bibb* v. *Allen*, 149 U. S. 481.

Perhaps the most serious of the petitioner's defences was that the 2,000 bales of cotton were sold without authority. As stated by his counsel, on Germany's announcing unrestricted submarine warfare, cotton fell and the petitioner telegraphed to the defendants to sell 2,000 bales. The telegram read as follows: "Stop ten seventeen twenty and ten seventeen fifteen"—which is understood to carry a direction to sell one thousand bales at 17.20 cents per pound and one thousand at 17.15. But there was clear and sufficient evidence that such stop orders as they were called were understood to direct not only sale at the price mentioned but, if that could not be got, a sale at the next best possible price. The respondents sold at fourteen cents which was the best that could be done. We think it unnecessary to go into further detail to show that the judgment should be affirmed.

*Judgment affirmed.*